

2011 SENATE HUMAN SERVICES

SB 2040

2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee
Red River Room, State Capitol

SB 2040
1-12-2011
Job Number 12817

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to evaluations in involuntary mental health commitments.

Minutes:

Attachments included.

Senator Judy Lee, Chairman, open the hearing on SB 2040.

Vonette Richter, Legislative Council, provided the committee with the portion of the interim committee's final report that discussed the entire involuntary mental health procedures. She pared it down to the part that pertains to this bill. Attachment #1 She also provided a copy of definitions. Attachment #2

The testimony the interim committee heard in support of this bill draft indicated that the change would help to enhance mental health services in the state and would help clarify those professionals authorized to make that determination.

The interim committee reviewed in general the involuntary mental health commitment procedures and the study also included a review of the need for more psychiatric services in the state. There was some concern that this section, as amended last session by placing it in the code where it is, placed more restrictions on who could conduct these exams.

Senator Judy Lee said it looks like it is adding addiction counselors to the list.

Ms. Richter said that was correct and only practicing within their scope of expertise.

Senator Gerald Uglem pointed out that last year the psychologist was added and before that it was only psychiatrists and this would expand it further.

Ms. Richter explained that it hasn't changed. It was a matter of moving it from one section to another.

Dr. Emmet Kenny, CO of Prairie St. Johns and member of the ND Hospital Association Board, spoke in support and offered an amendment to SB 2040. He explained that there is the issue of once someone gets into a hospital setting, a place where someone could be held against their wishes for lifesaving treatment, an expert examiner is needed to say that

judgment is impaired enough to force treatment against their wills. The definition section was not redrafted last time. The area proposed to be amended is the one area where physician was left out. He suggested looking at the section of the statute proposed to be amended and insert physician before psychiatrist. He felt that would resolve the issue and the document would be internally consistent.

Discussion followed on his proposed amendment and his concerns.

Senator Judy Lee asked the intern to draft the amendment.

Senator Dick Dever asked if the effect of the amendment would be that licensed addiction counselors would not be able to make that examination under any circumstance. He asked if the court has the ability to make the determination whether they are qualified.

Dr. Kenny explained the commitment statute and the layers in the process. Another flaw he found was in line 12. He recommended adding psychiatrist after physician. In his opinion most of the scope of practice gets into the training programs and requirements and addictions is clearly part of the work of training of physicians, psychiatrists, and psychologists. 70% of the emergency settings in ND do not have a psychologist or psychiatrist in residence in the county. In rural settings, the expert examination needs to be done within 24 hours. Basically for commitment any hospital that is licensed qualifies as a facility where commitment can occur and any physician qualifies as an expert.

There was discussion on whether psychiatrist needed to be added because they are licensed physicians. Is it redundant?

Alex Schweitzer, Supt. ND State Hospital, supports the bill and the amendment in terms of the scope of practice.

Senator Tim Mathern, Fargo Senator, served on the interim committee where these matters were considered. They found the availability of psychiatric service is a real problem in ND. This bill is an attempt to make sure that the minimum of psychiatric service intervention, the evaluation, is possible in most areas of the state.

There was no opposing testimony.

Corrine Hofman, Director of Policy and Operations with the Protection and Advocacy Project, had prepared opposing testimony but with the amendment thinks it is ok. She said they would support the bill if the amendment, as proposed, is added.

Senator Spencer Berry asked what they were opposed to.

Ms. Hofman replied that they were concerned about expanding the scope of authority for licensed addiction counselors.

Senator Dick Dever wondered if they should look at the definition of expert examiner and delete licensed addiction counselor. Then, where it is appropriate for them to be involved, specifically spell it out.

Ms. Hofman said it was complicated. She didn't know how it would affect the rest of the chapter.

Mr. Schweitzer commented on removing addiction counselors under the definition of expert examiners and felt it would cause problems throughout the rest of the code.

Dr. Kenny agreed that they needed to be kept in the expert examiner definition and get more specific about chemical dependency.

The hearing on SB 2040 was closed.

Senator Spencer Berry echoed the concern in regards to scope of practice and expertise.

The amendment was reviewed.

Senator Spencer Berry moved to **adopt the amendment as proposed.**

Seconded by **Senator Tim Mathern.**

Roll call vote 5-0-0. **Amendment adopted.**

Senator Tim Mathern moved a **Do Pass as Amended.**

Seconded by **Senator Spencer Berry.**

Discussion took place on the relationship of SB 2041 and SB 2040. They are complimentary bills.

Roll call vote 5-0-0. **Motion carried.**

Carrier is **Senator Judy Lee.**

PROPOSED AMENDMENT TO SENATE BILL NO. 2040

Page 1, line 9, remove overstrike over "a"

Page 1, line 9, after second "a" insert "licensed physician"

Page 1, line 9, after "licensed physician" insert ","

Page 1, line 10, remove overstrike over "psychiatrist or psychologist trained in a clinical program"

Page 1, line 10, insert "," after "psychiatrist"

Page 1, line 10, remove "an expert examiner"

Page 1, line 12, insert "psychiatrist" after "physician,"

Page 1, line 12, insert "," after "psychiatrist"

Date: 1-12-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2040

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Berry Seconded By Sen. Mathern

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Gerald Uglen, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

January 13, 2011



Handwritten signature and date: 1-13-11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2040

Page 1, line 9, remove the overstrike over "a" and insert immediately thereafter "licensed physician."

Page 1, line 10, remove the overstrike over "psychiatrist" and insert immediately thereafter an underscored comma

Page 1, line 10, remove the overstrike over "~~or psychologist trained in a clinical program~~"

Page 1, line 10, remove "an expert examiner"

Page 1, line 12, after the first comma insert "psychiatrist."

Renumber accordingly

Date: 1-12-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2040

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0009.02001 Title .03000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Gerald Uglem, V. Chair	✓				
Sen. Dick Dever	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. J. Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2040: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2040 was placed on the Sixth order on the calendar.

Page 1, line 9, remove the overstrike over "a" and insert immediately thereafter "licensed physician."

Page 1, line 10, remove the overstrike over "~~psychiatrist~~" and insert immediately thereafter an underscored comma

Page 1, line 10, remove the overstrike over "~~or psychologist trained in a clinical program~~"

Page 1, line 10, remove "an expert examiner"

Page 1, line 12, after the first comma insert "psychiatrist."

Renumber accordingly

2011 HOUSE HUMAN SERVICES

SB 2040

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2040
March 2, 2011
Job # 2040

Conference Committee

Committee Clerk Signature

Marlye Kiehl

Explanation or reason for introduction of bill/resolution:

Relating to evaluations in involuntary mental health commitments.

Minutes:

"Attached testimony # 1, #2."

Chairman Weisz: Called the hearing to order on SB 2040.

Rep. Shirley Meyer from District 36: See Attached Testimony #1. Vonette Richter from Legislative Council was the council during interim but in training today on redistricting. She said if you have any technical questions today you could ask for her. I do think that this is a pretty simple change.

Chairman Weisz: Rep Meyer, we did have a bill in the first half that added language.

Rep. Shirley Meyer: I do understand that has been happening and has happened in our committee also.

Chairman Weisz: I am unsure now exactly where it was added, as I thought it was added in involuntary commitment. We will be looking to see if there is some overlap or what exactly what was send out of the house.

Sen. Tim Mathern Senator from District 11: I served with many of you during the interim where we discussed this. This bill came to us because in the previous session while we were cleaning up this language and rearranging the chapter regarding those persons who could provide this information, we incorrectly eliminated physicians. This bill came to the interim committee to correct this problem. But beyond this correction, we have learned in the past few years that the provision of psychiatric services is becoming a greater problem in our state.

First Psychiatric services were eliminated from the Dickinson hospital.

Second Psychiatric services have been eliminated from the hospital in Williston.

In Fargo itself, although there are Psychiatric facilities, the ability for these facilities to hire psychiatrists has become much more complicated and almost impossible to hire. I would please recommend a Do Pass of this bill.

Dawn Hofner Director of Community Liaison Department at Prairie St John's Hospital in Fargo: See Testimony #2

NO OPPOSITION

Chairman Weisz: Closed the hearing.

Chairman Weisz: I did find that HB 1110 was similar to this bill but dealt with continued treatment orders. I do feel I should talk to Senator Lee about this as they should have similar language. 1110 doesn't say licensed physician which we would may need since 2040 does. SB 2040 talks about trained in a clinical program. HB 1110 just says Physicians, psychiatrists or psychologists. I would think which ever language is more appropriate we should have similar language.

2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee
Fort Union Room, State Capitol

SB 2040
March 7, 2011
Job #15036

Conference Committee

Committee Clerk Signature *Vicky Crabtree*

Minutes:

Chairman Weisz: I can't remember what the similar bill was, but the Judiciary Committee got the other bill with licensed addiction counselor that was identical to 1110 and they put our language on and added an emergency clause and kicked it out. The reason we didn't take this up right away was, do we want the language to be identical? When we added "licensed addiction counselor who is practicing within the professional scope of practice", do we want to add this in 2040? If you remember we did have concern that they could petition beyond their scope of practice.

Rep. Hofstad: It seems to me that in subsection C that we are really restrictive because we are only talking about the respondent who is chemically dependent. So a licensed addiction counselor certainly would be working within their scope in that situation. As I remember the other bill was a petition and was broader.

Chairman Weisz: Just a petition for involuntary commitment.

Rep. Porter: I'd have to agree with Rep. Hofstad in that they are two totally different things that we are talking about; even though they are talking about those professions inside of mental health.

Chairman Weisz: The bill we have in front of us has to do with evaluation and the other bill had to do with petition.

Rep. Porter: To the court.

Chairman Weisz: To the court to commit them. So the committee is comfortable with the language? If you are, I'll entertain a motion.

Rep. Hofstad: I would move a Do Pass on SB 2040.

Rep. Schmidt: Second.

VOTE: 13 y 0 n DO PASS CARRIED

Bill Carrier: Rep. Anderson

Date: 3-7-11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2040

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Hofstad Seconded By Rep. Schmidt

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	✓				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 13 No 0

Absent _____

Floor Assignment Rep. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2040, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).
Engrossed SB 2040 was placed on the Fourteenth order on the calendar.

2011 TESTIMONY

SB 2040

#1

EXCERPT FROM JUDICIAL PROCESS COMMITTEE FINAL REPORT REGARDING SENATE BILL NO. 2040

PROVIDED BY: VONETTE RICHTER, LEGISLATIVE COUNCIL

JANUARY 12, 2011

INVOLUNTARY MENTAL HEALTH COMMITMENT PROCEDURES Mental Illness Commitment Laws

The majority of North Dakota's initial laws concerning the voluntary, involuntary, and emergency commitment of individuals with mental illness and chemical dependency were enacted in 1957 and were not substantially changed until 1977. In 1977 the Legislative Assembly enacted Senate Bill No. 2164--the bill that created Chapter 25-03.1. The bill established many of the commitment procedures for the individuals with mental illness and chemical dependency which are currently in effect. The bill was precipitated by a number of state and federal court decisions that had invalidated state commitment laws similar to North Dakota's law.

A number of the commitment procedures contained in Chapter 25-03.1 have been amended in the years since the chapter was enacted in 1977. For example, Senate Bill No. 2389 (1989) replaced the terms "alcoholic individual" and "drug addict" with "chemically dependent person," set forth more specific procedures for the application for involuntary treatment, and permitted the parties to waive the preliminary hearing. Senate Bill No. 2370 (1993) authorized the state's attorney to seek reimbursement of funds expended by the county for a respondent who was determined to be indigent but is later found to have funds or property, clarified that a respondent has a right to a preliminary hearing, and set forth a procedure for a respondent to seek the discharge of a petition.

Testimony and Committee Considerations

In its study of the state's mental health commitment procedures and the availability of psychiatric services in the state, the committee received extensive testimony from the State Hospital, regional human service centers, the Mental Health America of North Dakota, the Protection and Advocacy Project, psychiatrists, psychologists, state's attorneys, a district judge, a private attorney, law enforcement, and private citizens who have been involved in the mental health commitment process. The committee's deliberations focused on two issues--statutory time limitations on patient holds and related issues and the availability of psychiatric services in the state.

Statutory Time Limitations on Patient Holds

Section 25-03.1-25 provides that a patient must be examined by an expert examiner within 23 hours of the placement of an emergency hold. An emergency hold can be placed by a peace officer or a physician if the patient appears to be potentially dangerous and does not agree to allow further evaluation and treatment. The committee received testimony from several psychiatrists

and state's attorneys regarding this section and the problems the expert examiners and others are experiencing with the time limitation in this section. The testimony indicated that problems arise when a person is brought to an emergency health care facility that does not have a psychiatrist or psychologist to do an expert examination.

The testimony indicated that another problem with the 23-hour requirement is the limited capacity of facilities and the lack of availability of beds in treatment centers in the state. According to the testimony, when there is only 23 hours from the initiation of the hold to start the expert examination and time is needed to coordinate care and find an available bed, major problems arise. The testimony noted that there are times when a facility may decline the acceptance of a patient for admission because the facility knows it would not be able to examine the patient within the 23 hours from the initiation of the hold. The testimony indicated that a case may be dismissed before it gets to court because timeframes have been missed. The testimony indicated that the timelines for mental health evaluations are 24 hours in Minnesota, Wyoming, and Alaska, while Montana provides that the examination must be done as soon as the professional can be contacted.

The committee also received testimony that the lack of available transportation for transporting patients is another key issue that can prevent an expert from being able to conduct an examination within 23 hours. The testimony indicated that if a hospital is unable to find a bed for the patient, the hospital may contact other agencies in search of a bed, detain the patient in a correctional facility, or violate the 23-hour requirement.

The testimony indicated that because psychiatric services are no longer available at the hospital in Dickinson, patients cannot be held at that location while awaiting transport to Bismarck or Jamestown. As a result, the testimony indicated that individuals may have to be held at the correctional facility until transportation can be arranged. The testimony indicated that this hold is usually for 3 hours or 4 hours but has been up to 12 hours. The testimony from the Badlands Human Service Center noted that a request for more beds in Dickinson was denied by the Legislative Assembly in 2009. It was noted that the additional beds could be used to hold patients awaiting transport.

Other testimony indicated there are concerns in the state about the lack of uniformity of commitment procedures from county to county. It was noted that this may be the result of differences in resources, differences in philosophy, and differences in expertise. It was suggested that one solution to those uniformity issues would be the simplification of commitment forms. The testimony indicated that there are multiple and duplicative forms that contribute to the lack of uniformity

in procedures. According to the testimony, uniformity could be accomplished with input from stakeholders and through legal processes. It was noted that Department of Human Services staff has engaged in meetings and consultation with judges and attorneys regarding commitment rules and will continue to do so.

The committee received testimony that recommended the 23-hour time period within which the expert examination must take place be modified to allow 48 hours or 72 hours for an expert examination, exclusive of weekends or holidays. It was suggested that if a 48-hour or 72-hour time period is not possible, then current holders of qualified mental health professional status should be allowed to initiate commitments and proceed to court hearings without requiring an additional expert examination within 23 hours. The testimony indicated that in no case should the time period be longer than 72 hours. It was noted that the 23-hour time period is adequate in most cases, but for those in which it is not, the law should allow for exceptions. One psychiatrist indicated extending the time period within which an examination must be done would be preferable to authorizing a broader group of professionals to conduct the examinations. It was noted that South Dakota allows some professionals to conduct the examinations who are not trained to treat chemical dependency or mental illness. It was noted, however, that even with the broader group of professionals who are permitted to conduct the examinations in South Dakota, there is still a shortage of professionals in the more rural areas of that state.

Testimony received from a private attorney in opposition to extending the 23-hour time period indicated that the problem is not with the laws and mental health commitment procedures, but rather the problem is the medical community and the lack of resources. According to the testimony, it is not appropriate to hold a person beyond 23 hours. The testimony stressed in order to protect the rights of the individual, it is important that the evaluation is conducted as quickly as possible. It was noted that the initial examination that is required to be performed within 23 hours is conducted before an attorney is involved in the process. The testimony also indicated that judges can order a delay based on just cause, such as a snowstorm or transportation issues.

The committee also received testimony that indicated that the commitment procedures in Chapter 25-03.1 serve the community and the persons in need of treatment very well. The testimony indicated that extending the examination period from 24 hours to 48 hours may be too great of an infringement on a person's rights.

The committee considered a bill draft that would provide for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status. Testimony in support of this bill draft indicated that the change would help to enhance mental health services in the state.

The committee also considered a bill draft that would amend Section 25-03.1-23 to include licensed addiction

counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order. The committee received testimony through 2009 legislation, which attempted to fully recognize licensed addiction counselors as experts in addiction commitment definitions, did not include a reference to licensed addiction counselors in Section 25-03.1-23. The testimony in support of the bill draft indicated the change was necessary to make this section consistent with other provisions in Chapter 25-03.1.

Availability of Psychiatric Services in the State

The committee received testimony regarding the availability of psychiatric services in the state and potential solutions to the access issue. The committee received testimony that indicated that due to the rural nature of the state and the limited availability of psychiatric services in many parts of the state, it is often difficult to meet the deadlines imposed by law within which an expert examination is required to be conducted. According to the testimony, there are 107 psychiatrists in the state located in 8 communities and 170 psychologists in the state located in 16 communities. About 23 percent of the state's population lives in a county without a psychiatrist or psychologist. It was noted that 31 out of 55 hospitals in the state do not have a psychiatrist or psychologist on staff or in the community.

The committee received testimony that among the reasons for the loss of psychiatric services in the state are the financial pressures to be more productive, the division of a bigger workload among fewer providers, and the pressures of financial reimbursement in mental health care. It was noted that ideally there should be 13 mental health professionals per 100,000 people. According to the testimony, although it appears there are a sufficient number of mental health professionals in the Fargo area (66 psychiatrists and 53 psychologists), the number of available mental health professionals in that area is somewhat skewed because the Fargo providers also serve a large population of people who live on the Minnesota side of the river.

Other testimony regarding the availability of psychiatric services in the state indicated the two problems that are in need of solutions are the lack of sufficient resources to deal with treating mental illness and chemical dependency in the state and the fragmented utilization of the private and public resources currently devoted to the treatment of mental illness and chemical dependency. The testimony indicated that over the past decade, general hospitals in the state and other states have taken an increasingly larger role of responsibility for behavioral health care, particularly in the area of emergency services and have had to act as a backstop to other agencies and organizations. It was noted as financial margins for health care reimbursement have gotten narrower and the stability of health care organizations more tenuous, there has been declining ability of those hospitals to cross-subsidize services that historically are mission-driven. As a result, psychiatric programs at private facilities across the state have cut programming and faced increasing pressures

to reduce financial losses. The testimony indicated that without adequate supervised residential housing options, community case management, access to medications, and outpatient psychiatric care, the system is caught in a cycle of using expensive inpatient resources because it is the only thing available. It was suggested there should be joint ventures and partnerships with respect to the continuum of care needed for mental health patients. It was noted when it comes to dealing with mental health cases, hospitals and social service agencies do not communicate as well as they should.

Testimony from law enforcement indicated private medical facilities and emergency responders are being overutilized as the gateway and a treatment option for the community-based treatment program. It was noted that the statewide human service centers operate on a Monday through Friday schedule with holidays off; however, people in crisis occur 24 hours a day 7 days a week. According to the testimony, when someone is in crisis and needs assistance, the call goes to the emergency responders. The testimony suggested some solutions to this problem is more funding for community-based programs, an admissions facility that is available 24 hours per day, increased bed level at the State Hospital, and a transition facility.

Other testimony regarding the availability of psychiatric services in the state for mental health commitment evaluations indicated that availability is not so much related to the numbers or prevalence of psychiatrists, as it is to other factors, such as lack of transportation. It was suggested that increasing the availability of psychiatric services can be accomplished through expansion of telemedicine and psychiatric consultation with family medicine physicians and other medically trained professionals. It was also suggested that in the long term, the future availability of psychiatric services can be ensured by working collaboratively with all mental health and primary care providers and by working to build incentives and opportunities for those in medical training to pursue mental health practices. It was noted primary care resident physicians in the state are required to spend time in psychiatry rotations. In Fargo there is integration of psychiatry training built into the internal medicine residency.

Testimony from the Protection and Advocacy Project suggested that to increase the number of psychiatrists and other mental health professionals, the state may wish to implement a scholarship and student loan program for mental health professionals which is similar to the program for encouraging more dentists to practice in the state. It was noted that a loan or scholarship program to forgive student debt could be set up in a way that would identify certain rural areas in which the person must practice to qualify for the program.

The committee received testimony regarding the use of telepsychiatry or telemedicine for mental health evaluations. The testimony indicated telemedicine is a valuable tool that could be used to some extent, but it is important to consider the patient's rights to an expert examination. The testimony noted that although telemedicine or telepsychiatry is the wave of the future, the ideal situation is still a face-to-face evaluation.

Testimony from a pediatric psychiatrist who has worked with hundreds of children using telemedicine technology indicated the quality of telemedicine technology is good, there are few delays, and there are few concerns about breaches of security when using telemedicine technology.

Testimony from several attorneys regarding the use of telemedicine technology for conducting an expert examination indicated that if the use of the telemedicine or telepsychiatry technology is acceptable to the medical community, its use may be acceptable to the legal community as well. It was noted the use of telemedicine in the area of mental health examinations will depend on the quality of the equipment and transmissions.

The committee considered a bill draft that would authorize the use of telemedicine technologies for court-ordered examinations. Testimony in support of the bill draft indicated the bill draft clarifies that telemedicine may be used for conducting the examinations. It was noted that authorizing the use of telemedicine technologies will make the commitment process work better without extending the time limitations. Other testimony in support of the bill draft indicated the use of telemedicine technologies would enhance the use of psychiatrists in underserved parts of the state.

Recommendations

The committee recommends Senate Bill No. 2040 to provide that for purposes of conducting an examination under Section 25-03.1-11, an individual who meets the definition of expert examiner is authorized to evaluate a respondent's mental status.

The committee recommends Senate Bill No. 2039 to amend Section 25-03.1-23 to include licensed addiction counselors as one of the mental health professionals authorized to execute a certificate regarding a continuing treatment order.

The committee recommends Senate Bill No. 2041 to authorize the use of telemedicine technologies for court-ordered examinations.

25-03.1-02. Definitions.

In this chapter, unless the context requires otherwise:

1. "Alternative treatment order" means an involuntary outpatient order for a treatment program, other than hospitalization, which may include treatment with a prescribed medication.
2. "Chemically dependent person" means an individual with an illness or disorder characterized by a maladaptive pattern of usage of alcohol or drugs, or a combination thereof, resulting in social, occupational, psychological, or physical problems.
3. "Consent" means voluntary permission that is based upon full disclosure of facts necessary to make a decision and which is given by an individual who has the ability to understand those facts.
4. "Court" means, except when otherwise indicated, the district court serving the county in which the respondent resides.
5. "Department" means the department of human services.
6. "Director" means the director of a treatment facility or the director's designee.
7. "Expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor appointed by the court to examine the respondent and to provide an evaluation of whether the respondent is a person requiring treatment.
8. "Independent expert examiner" means a licensed physician, psychiatrist, psychologist trained in a clinical program, or licensed addiction counselor, chosen at the request of the respondent to provide an independent evaluation of whether the respondent is a person requiring treatment.
9. "Magistrate" means the judge of the appropriate district or juvenile court or a judge assigned by the presiding judge of the judicial district.
10. "Mental health professional" means:
 - a. A psychologist with at least a master's degree who has been either licensed or approved for exemption by the North Dakota board of psychology examiners.
 - b. A social worker with a master's degree in social work from an accredited program.
 - c. A registered nurse with a master's degree in psychiatric and mental health nursing from an accredited program.
 - d. A registered nurse with a minimum of two years of psychiatric clinical experience under the supervision of a registered nurse as defined by subdivision c or of an expert examiner.

e. A licensed addiction counselor.

f. A licensed professional counselor with a master's degree in counseling from an accredited program who has either successfully completed the advanced training beyond the master's degree as required by the national academy of mental health counselors or a minimum of two years of clinical experience in a mental health agency or setting under the supervision of a psychiatrist or psychologist.

11. "Mentally ill person" means an individual with an organic, mental, or emotional disorder which substantially impairs the capacity to use self-control, judgment, and discretion in the conduct of personal affairs and social relations. "Mentally ill person" does not include a mentally retarded person of significantly subaverage general intellectual functioning which originates during the developmental period and is associated with impairment in adaptive behavior, although a person who is mentally retarded may also suffer from a mental illness. Chemical dependency does not per se constitute mental illness, although persons suffering from that condition may also be suffering from mental illness.

12. "Person requiring treatment" means a person who is mentally ill or chemically dependent, and there is a reasonable expectation that if the person is not treated for the mental illness or chemical dependency there exists a serious risk of harm to that person, others, or property. "Serious risk of harm" means a substantial likelihood of:

a. Suicide, as manifested by suicidal threats, attempts, or significant depression relevant to suicidal potential;

b. Killing or inflicting serious bodily harm on another person or inflicting significant property damage, as manifested by acts or threats;

c. Substantial deterioration in physical health, or substantial injury, disease, or death, based upon recent poor self-control or judgment in providing one's shelter, nutrition, or personal care; or

d. Substantial deterioration in mental health which would predictably result in dangerousness to that person, others, or property, based upon evidence of objective facts to establish the loss of cognitive or volitional control over the person's thoughts or actions or based upon acts, threats, or patterns in the person's treatment history, current condition, and other relevant factors, including the effect of the person's mental condition on the person's ability to consent.

13. "Private treatment facility" means any facility established under chapter 10-19.1 or 10-33 and licensed under chapter 23-16 or 50-31.

14. "Psychiatrist" means a licensed physician who has completed a residency program in psychiatry.

15. "Public treatment facility" means any treatment facility not falling under the definition of a

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Shirley Meyer

SB 2040

Engrossed Senate bill No. 2040 comes to you from the Interim Judicial Process Committee. A rewrite of a section in the Mental Health Commitment Law during the 2009 session resulted in a reduction in the number of persons who could conduct an evaluation in involuntary mental health commitments.

This bill is not a policy change; it simply clarifies that the evaluation of a respondent's mental status may be made by a licensed physician, psychiatrist, or psychologist.

SB 2040 also clarifies that the evaluation of chemical dependency may be made by a licensed physician, psychiatrist, licensed addiction counselor, or psychologist.

There is a significant shortage of professionals who are able to make evaluations in involuntary mental health commitments, and SB 2040 will help to alleviate this problem and clarify who can legally make these determinations.

I would respectfully ask for a Do Pass recommendation of SB 2040.

2



PRAIRIE ST. JOHN'S™

March 2, 2011

RE: Senate Bill 2040

Dear Members of the Health and Human Services Committee:

I am Dr. Emmet Kenney, a psychiatrist, CEO of Prairie St. John's, and a member of the Governing Board of the North Dakota Hospital Association.

I come before you today to urge your support for Senate Bill 2040. The State's commitment statute underwent revision in the last legislative session. A proposed change in the statute will make it more clear who is able to conduct examinations under the statute. It provides for a consistent definition of an expert examiner as provided elsewhere in the statute.

This would prevent any potential confusion in implementing a commitment proceeding.

Ms. Susan Rae Helgeland, the Executive Director of Mental Health America of North Dakota, has requested that I advise you they also support this bill. MHA is the largest advocacy group for persons with mental illness and addictions in North Dakota.

In summary, I urge you to support and pass Senate Bill 2040 to make commitment procedures more consistent and more reliably understandable. If there are any questions, I would be happy to address them.

Sincerely,

Emmet M. Kenney, Jr., M.D., CEO

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