Ohio Legislative Service Commission

Justin Pinsker

Fiscal Note & Local Impact Statement

Bill: Am. Sub. S.B. 43 of the 130th G.A. **Date**: June 4, 2014

Status: As Enacted **Sponsor**: Sens. Burke and Tavares

Local Impact Statement Procedure Required: Yes

Contents: To make changes to the laws governing the civil commitment of and treatment provided to mentally ill persons

State Fiscal Highlights

- The bill changes the term "mentally ill person subject *to hospitalization* by court order" in Chapter 5122. of the Revised Code to "mentally ill person subject to court order." This change could clarify that persons could be served in a community setting rather than only in a hospital. If more persons are treated in a community setting, the Ohio Department of Mental Health and Addiction Services (OMHAS) could realize some savings in hospital costs, but the state could experience an increase in community Medicaid costs.
- The bill modifies the criteria that a mentally ill person must meet to be subject to court order. This modification in the criteria will result in an increase in the number of civil commitment cases heard in probate courts and thus, the number of persons who are civilly committed. This will increase state costs for hospitalization and community Medicaid.

Local Fiscal Highlights

- The bill changes the term "mentally ill person subject *to hospitalization* by court order" in Chapter 5122. of the Revised Code to "mentally ill person subject to court order." This change could clarify that persons could be served in a community setting rather than only in a hospital. If more persons are treated in a community setting, local behavioral health boards could experience an increase in costs.
- The bill modifies the criteria that a mentally ill person must meet to be subject to court order. This modification in the criteria will result in an increase in the number of civil commitment cases heard in probate courts and thus, the number of persons who are civilly committed. This will increase probate court costs and local board treatment costs.

- The bill requires a local probate court to charge $25 for the filing of an affidavit and proceedings for a mentally ill person subject to court order. The court may waive the fee if it finds that the affiant is indigent or for good cause shown. This provision would result in a gain in fee revenue for the local probate court if the court does not waive the fee.
- The bill grants persons including, but not limited to, local boards of alcohol, drug addiction, and mental health services and community mental health services providers, immunity from any liability while providing court-ordered treatment from the person receiving court-ordered treatment, provided the person is acting in good faith. The bill's immunity provision may further limit a local board's liability than is the case under current law, which could in turn save a local board legal expenses that might otherwise have been incurred.
- Under the bill, for a respondent who is ordered to receive treatment in an outpatient setting, if at any time after the first 90-day period the entity or person to whom the respondent was ordered determines that the respondent has demonstrated voluntary consent for treatment, that entity or person is required to immediately notify the respondent, the respondent's counsel, the attorney designated by the local board of alcohol, drug addiction, and mental health services, and the local probate court. If a respondent consents to voluntary treatment and the respondent's case is dismissed, the bill might reduce court caseload and costs.
- The bill allows the entity or person to whom the respondent was ordered for treatment to submit a report to the local probate court if the respondent fails, as specified in the bill, to comply with their treatment. If a respondent does not comply with their treatment, resulting in additional report filings and additional hearings, the bill might increase court caseload and costs.
- Under current law, a county is required to pay the costs, fees, and expenses of an attorney appointed by the probate division for an indigent who allegedly is a mentally ill person. The bill adds to the same section of law the costs, fees, and expenses of an attorney appointed by the probate division for a person suffering from alcohol and other drug abuse and who may be ordered to undergo treatment. Under the bill, probate courts would have to pay the costs, fees, and expenses of an attorney appointed by the probate division for a person suffering from alcohol and other drug abuse and who may be ordered to undergo treatment. The court could seek reimbursement from OMHAS. However, the funding source in the bill (GRF line item 334506, Court Costs) is already being fully used to reimburse probate courts for a portion of the costs, fees, and expenses of an attorney appointed by the probate division for an indigent who allegedly is a mentally ill person.

Detailed Fiscal Analysis

The bill makes several changes to the laws governing court-ordered commitment of and treatment provided to mentally ill persons.

Definition of mentally ill person subject to court order

The bill changes the term "mentally ill person subject *to hospitalization* by court order" in Chapter 5122. of the Revised Code to "mentally ill person subject to court order." This change could clarify that persons could be served in a community setting rather than only in a hospital. The Ohio Department of Mental Health and Addiction Services (OMHAS) is responsible for the costs of state psychiatric hospitals. Local behavioral health boards are responsible for the cost of treatment in the community unless the person is on Medicaid, in which case the state and federal government share the cost. It is generally assumed that treatment in the community could cost less than treatment in a hospital. If more persons are treated in a community setting, local boards could experience an increase in costs. On the other hand, OMHAS could realize some savings in hospital costs, but the state could experience an increase in community Medicaid costs.

Criteria to be subject to court order

The bill also modifies the criteria that a mentally ill person must meet to be subject to court order to include persons who would benefit from the treatment as manifested by evidence of behavior that indicates all of the following: (1) the person is unlikely to survive safely in the community without supervision, based on a clinical determination, (2) the person has a history of lack of compliance with treatment for mental illness and certain conditions apply, (3) the person, as a result of the person's mental illness, is unlikely to voluntarily participate in necessary treatment, and (4) in view of the person's treatment history and current behavior, the person is in need of treatment in order to prevent a relapse or deterioration that would be likely to result in substantial risk of serious harm to the person or others. The bill states that an individual who meets only these new criteria is not subject to hospitalization.

This modification to the criteria will result in an increase in the number of civil commitment cases heard in probate courts and thus, the number of persons who are civilly committed. This will increase probate court, state, and local board costs. According to the Ohio Judicial Conference, probate court costs for civil commitment cases are estimated to be $100 for the service of notice, $120 for transportation, $200 to $300 for indigent counsel, and $300 to $400 if an independent psychiatric evaluation is needed. There could be additional costs such as witnesses, referees, court reporters, and other hearing costs. OMHAS currently provides some reimbursement for civil commitment cases to probate courts from GRF line item 334506, Court Costs. H.B. 59 of the 130th General Assembly appropriated $784,210 to this line item in FY 2014. The modification to the criteria could result in some savings to the state and local boards if

mentally ill persons receive treatment before the illness progresses to an acute level. The bill also requires a local probate court to charge $25 for the filing of an affidavit and proceedings for a mentally ill person subject to court order. The court may waive the fee if it finds that the affiant is indigent or for good cause shown. This provision would result in a gain in fee revenue for the local probate court if the court does not waive the fee.

Voluntary consent to treatment

Under the bill, for a respondent who is ordered to receive treatment in an outpatient setting, if at any time after the first 90-day period the entity or person to whom the respondent was ordered determines that the respondent has demonstrated voluntary consent for treatment, that entity or person is required to immediately notify the respondent, the respondent's counsel, the attorney designated by the local board of alcohol, drug addiction, and mental health services, and the local probate court. The bill also requires the entity or person overseeing treatment to submit to the court a report of the findings and recommendations. After receiving the report, the probate court may dismiss the case upon review of the facts. If a respondent consents to voluntary treatment and the respondent's case is dismissed, the bill might reduce court caseload and costs.

Report for failure to comply with treatment

The bill allows the entity or person to whom the respondent was ordered for treatment to submit a report to the local probate court if the respondent fails, as specified in the bill, to comply with their treatment. Upon receipt of the report, the court must promptly schedule a hearing to review the case. The local board must receive notice of the hearing and the local board and the entity or person treating the respondent must submit a report to the court with a plan for appropriate alternative treatment, if any, or recommend that the court discontinue the court-ordered treatment. The bill also requires that the court consider available and appropriate alternative placements but cannot consider criminal sanctions that result in confinement in a jail or other local correctional facility based on the respondent's failure to comply with the treatment plan. The court may only order the respondent to a more restrictive placement if certain criteria are met and may not order inpatient treatment unless the court determines by clear and convincing evidence presented by the local board that the respondent meets other specified criteria. If a respondent does not comply with their treatment, resulting in additional report filings and additional hearings, the bill might increase court caseload and costs.

Immunity from liability

The bill grants persons including, but not limited to, local boards of alcohol, drug addiction, and mental health services and community mental health services providers, immunity from any liability while providing court-ordered treatment from the person receiving court-ordered treatment, provided the person is acting in good faith. The bill's

immunity provision may further limit a local board's liability than is the case under current law, which could in turn save a local board legal expenses that might otherwise have been incurred.

Attorney fee reimbursement for local probate courts

Under current law, a county is required to pay the costs, fees, and expenses of an attorney appointed by the probate division for an indigent who allegedly is a mentally ill person. The county may seek reimbursement from OMHAS for these costs. Each fiscal year OMHAS must allocate an amount for reimbursements. The total of all the allocations to counties must equal the amount appropriated for the fiscal year to OMHAS specifically for this purpose. The bill adds to the same section of law the costs, fees, and expenses of an attorney appointed by the probate division for a person suffering from alcohol and other drug abuse and who may be ordered to undergo treatment.

This provision would likely result in additional costs to probate courts. However, the magnitude of the impact cannot be determined due to a lack of data. It is unknown how many cases of involuntary treatment for alcohol and other drug abuse there have been as a result of Casey's Law (S.B. 117 of the 129th General Assembly). According to OMHAS, the Department and the local alcohol, drug addiction, and mental health services boards do not track involuntary treatment for alcohol and other drug abuse. LSC found the same to be true for probate courts.

Under the bill, probate courts would have to pay the costs, fees, and expenses of an attorney appointed by the probate division for a person suffering from alcohol and other drug abuse and who may be ordered to undergo treatment. The court could seek reimbursement from OMHAS. However, the funding source in the bill (GRF line item 334506, Court Costs) is already being fully used to reimburse probate courts for a portion of the costs, fees, and expenses of an attorney appointed by the probate division for an indigent who allegedly is a mentally ill person. For FY 2013, OMHAS allocated a total of $544,999 to probate courts from GRF line item 334506. This amount reimbursed approximately 40% of probate court costs related to civil commitments. H.B. 59 of the 130th General Assembly appropriated $784,210 to line item 334506 in FY 2014 and FY 2015. Assuming the reimbursement sought by probate courts in FY 2014 would be similar to what the probate courts sought in FY 2013, the current FY 2014 appropriation would cover approximately 53% of probate court costs related to civil commitments this fiscal year.

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