CHAPTER 1056

MENTAL HEALTH AND SUBSTANCE-RELATED DISORDERS — HOSPITALIZATIONS, DISCLOSURE OF INFORMATION, AND SERVICES

H.F. 2456

AN ACT relating to behavioral health, including provisions relating to involuntary commitments and hospitalizations, the disclosure of mental health information to law enforcement professionals, and mental health and disability services.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 125.80, subsection 3, Code 2018, is amended to read as follows:

3. If the report of a court-designated licensed physician or mental health professional is to the effect that the respondent is not a person with a substance-related disorder, the court, without taking further action, ~~may~~ shall terminate the proceeding and dismiss the application on its own motion and without notice.

Sec. 2. Section 125.81, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 2A. A respondent shall be released from detention prior to the commitment hearing if a licensed physician or mental health professional examines the respondent and determines the respondent no longer meets the criteria for detention under subsection 1 and provides notification to the court.

Sec. 3. Section 125.82, subsection 4, Code 2018, is amended to read as follows:

4. The respondent's welfare is paramount, and the hearing shall be tried as a civil matter and conducted in as informal a manner as is consistent with orderly procedure. The hearing may be held by video conference at the discretion of the court. Discovery as permitted under the Iowa rules of civil procedure is available to the respondent. The court shall receive all relevant and material evidence, but the court is not bound by the rules of evidence. A presumption in favor of the respondent exists, and the burden of evidence and support of the contentions made in the application shall be upon the person who filed the application. If upon completion of the hearing the court finds that the contention that the respondent is a person with a substance-related disorder has not been sustained by clear and convincing evidence, the court shall deny the application and terminate the proceeding.

Sec. 4. Section 135G.6, Code 2018, is amended by striking the section and inserting in lieu thereof the following:

135G.6 Inspection — conditions for issuance.

The department shall issue a license to an applicant under this chapter if the department has ascertained that the applicant's facilities and staff are adequate to provide the care and services required of a subacute care facility.

Sec. 5. Section 228.1, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 3A. *"Law enforcement professional"* means a law enforcement officer as defined in section 80B.3, county attorney as defined in section 331.101, probation or parole officer, or jailer.

Sec. 6. NEW SECTION. **228.7A Disclosures to law enforcement professionals.**

1. Mental health information relating to an individual may be disclosed by a mental health professional, at the minimum consistent with applicable laws and standards of ethical conduct, to a law enforcement professional if all of the following apply:

a. The disclosure is made in good faith.

b. The disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of the individual or to a clearly identifiable victim or victims.

c. The individual has the apparent intent and ability to carry out the threat.

2. A mental health professional shall not be held criminally or civilly liable for failure to disclose mental health information relating to an individual to a law enforcement professional except in circumstances where the individual has communicated to the mental

health professional an imminent threat of physical violence against the individual's self or against a clearly identifiable victim or victims.

3. A mental health professional discharges the professional's duty to disclose pursuant to subsection 1 by making reasonable efforts to communicate the threat to a law enforcement professional.

Sec. 7. Section 229.1, subsection 20, Code 2018, is amended by adding the following new paragraph:

NEW PARAGRAPH. *d.* Has a history of lack of compliance with treatment and any of the following apply:

(1) Lack of compliance has been a significant factor in the need for emergency hospitalization.

(2) Lack of compliance has resulted in one or more acts of serious physical injury to the person's self or others or an attempt to physically injure the person's self or others.

Sec. 8. Section 229.10, subsection 3, Code 2018, is amended to read as follows:

3. If the report of one or more of the court-designated physicians or mental health professionals is to the effect that the individual is not seriously mentally impaired, the court ~~may~~ shall without taking further action terminate the proceeding and dismiss the application on its own motion and without notice.

Sec. 9. Section 229.11, Code 2018, is amended by adding the following new subsection:

NEW SUBSECTION. 1A. A respondent shall be released from detention prior to the hospitalization hearing if a licensed physician or mental health professional examines the respondent and determines the respondent no longer meets the criteria for detention under subsection 1 and provides notification to the court.

Sec. 10. Section 229.12, subsection 3, paragraph a, Code 2018, is amended to read as follows:

a. The respondent's welfare shall be paramount and the hearing shall be conducted in as informal a manner as may be consistent with orderly procedure, but consistent therewith the issue shall be tried as a civil matter. The hearing may be held by video conference at the discretion of the court. Such discovery as is permitted under the Iowa rules of civil procedure shall be available to the respondent. The court shall receive all relevant and material evidence which may be offered and need not be bound by the rules of evidence. There shall be a presumption in favor of the respondent, and the burden of evidence in support of the contentions made in the application shall be upon the applicant.

Sec. 11. Section 229.13, subsection 7, paragraph a, subparagraphs (2) and (3), Code 2018, are amended to read as follows:

(2) Once in protective custody, the respondent shall be given the choice of being treated by the appropriate medication which may include the use of oral medicine or injectable antipsychotic medicine by a mental health professional acting within the scope of the mental health professional's practice at an outpatient psychiatric clinic, hospital, or other suitable facility or being placed for treatment under the care of a hospital or other suitable facility for inpatient treatment.

(3) If the respondent chooses to be treated by the appropriate medication which may include the use of oral medicine or injectable antipsychotic medicine but the mental health professional acting within the scope of the mental health professional's practice at the outpatient psychiatric clinic, hospital, or other suitable facility determines that the respondent's behavior continues to be likely to result in physical injury to the respondent's self or others if allowed to continue, the mental health professional acting within the scope of the mental health professional's practice shall comply with the provisions of subparagraph (1) and, following notice and hearing held in accordance with the procedures in section 229.12, the court may order the respondent treated on an inpatient basis requiring full-time custody, care, and treatment in a hospital until such time as the chief medical officer reports that the respondent does not require further treatment for serious mental impairment or

has indicated the respondent is willing to submit to treatment on another basis as ordered by the court.

Sec. 12. Section 229.22, subsection 2, paragraph b, Code 2018, is amended to read as follows:

b. If the magistrate orders that the person be detained, the magistrate shall, by the close of business on the next working day, file a written order with the clerk in the county where it is anticipated that an application may be filed under section 229.6. The order may be filed by facsimile if necessary. A peace officer from the law enforcement agency that took the person into custody, if no request was made under paragraph *"a"*, may inform the magistrate that an arrest warrant has been issued for or charges are pending against the person and request that any written order issued under this paragraph require the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The order shall state the circumstances under which the person was taken into custody or otherwise brought to a facility or hospital, and the grounds supporting the finding of probable cause to believe that the person is seriously mentally impaired and likely to injure the person's self or others if not immediately detained. The order shall also include any law enforcement agency notification requirements if applicable. The order shall confirm the oral order authorizing the person's detention including any order given to transport the person to an appropriate facility or hospital. A peace officer from the law enforcement agency that took the person into custody may also request an order, separate from the written order, requiring the facility or hospital to notify the law enforcement agency about the discharge of the person prior to discharge. The clerk shall provide a copy of the written order or any separate order to the chief medical officer of the facility or hospital to which the person was originally taken, to any subsequent facility to which the person was transported, and to any law enforcement department, ~~or~~ ambulance service, or transportation service under contract with a mental health and disability services region that transported the person pursuant to the magistrate's order. A transportation service that contracts with a mental health and disability services region for purposes of this paragraph shall provide a secure transportation vehicle and shall employ staff that has received or is receiving mental health training.

Sec. 13. Section 331.397, Code 2018, is amended to read as follows:

331.397 Regional core services.

1. For the purposes of this section, unless the context otherwise requires, *"domain"* means a set of similar services that can be provided depending upon a person's service needs.

2. *a.* (1) A region shall work with service providers to ensure that services in the required core service domains in subsections 4 and 5 are available to residents of the region, regardless of potential payment source for the services.

(2) Subject to the available appropriations, the director of human services shall ensure the ~~initial~~ core service domains listed in ~~subsection~~ subsections 4 and 5 are covered services for the medical assistance program under chapter 249A to the greatest extent allowable under federal regulations. The medical assistance program shall reimburse Medicaid enrolled providers for Medicaid covered services under subsections 4 and 5 when the services are medically necessary, the Medicaid enrolled provider submits an appropriate claim for such services, and no other third-party payer is responsible for reimbursement of such services. Within funds available, the region shall pay for such services for eligible persons when payment through the medical assistance program or another third-party payment is not available, unless the person is on a waiting list for such payment or it has been determined that the person does not meet the eligibility criteria for any such service.

b. Until funding is designated for other service populations, eligibility for the service domains listed in this section shall be limited to such persons who are in need of mental health or intellectual disability services. However, if a county in a region was providing services to an eligibility class of persons with a developmental disability other than intellectual disability or a brain injury prior to formation of the region, the class of persons shall remain eligible for the services provided when the region ~~is~~ was formed~~, provided that funds are available to continue such services without limiting or reducing core services~~.

c. It is the intent of the general assembly to address the need for funding so that the availability of the service domains listed in this section may be expanded to include such persons who are in need of developmental disability or brain injury services.

3. Pursuant to recommendations made by the director of human services, the state commission shall adopt rules as required by section 225C.6 to define the services included in the ~~initial and additional~~ core service domains listed in this section. The rules shall provide service definitions, service provider standards, service access standards, and service implementation dates, and shall provide consistency, to the extent possible, with similar service definitions under the medical assistance program.

a. The rules relating to the credentialing of a person directly providing services shall require all of the following:

~~*a.*~~ (1) The person shall provide services and represent the person as competent only within the boundaries of the person's education, training, license, certification, consultation received, supervised experience, or other relevant professional experience.

~~*b.*~~ (2) The person shall provide services in substantive areas or use intervention techniques or approaches that are new only after engaging in appropriate study, training, consultation, and supervision from a person who is competent in those areas, techniques, or approaches.

~~*c.*~~ (3) If generally recognized standards do not exist with respect to an emerging area of practice, the person shall exercise careful judgment and take responsible steps, including obtaining appropriate education, research, training, consultation, and supervision, in order to ensure competence and to protect from harm the persons receiving the services in the emerging area of practice.

b. The rules relating to the availability of intensive mental health services specified in subsection 5 shall specify that the minimum amount of services provided statewide shall be as follows:

(1) Twenty-two assertive community treatment teams.

(2) Six access centers.

(3) Intensive residential service homes that provide services to up to one hundred twenty persons.

4. The ~~initial~~ core service domains shall include the following:

a. Treatment designed to ameliorate a person's condition, including but not limited to all of the following:

(1) Assessment and evaluation.
(2) Mental health outpatient therapy.
(3) Medication prescribing and management.
(4) Mental health inpatient treatment.

b. Basic crisis response provisions, including but not limited to all of the following:

(1) Twenty-four-hour access to crisis response.
(2) Evaluation.
(3) Personal emergency response system.

c. Support for community living, including but not limited to all of the following:

(1) Home health aide.
(2) Home and vehicle modifications.
(3) Respite.
(4) Supportive community living.

d. Support for employment or for activities leading to employment providing an appropriate match with an individual's abilities based upon informed, person-centered choices made from an array of options, including but not limited to all of the following:

(1) Day habilitation.
(2) Job development.
(3) Supported employment.
(4) Prevocational services.

e. Recovery services, including but not limited to all of the following:

(1) Family support.
(2) Peer support.

f. Service coordination including coordinating physical health and primary care, including but not limited to all of the following:

(1) Case management.
(2) Health homes.
5. *a.* Provided that federal matching funds are available under the Iowa health and wellness plan pursuant to chapter 249N, the following intensive mental health services in strategic locations throughout the state shall be provided within the following core service domains:
(1) Access centers that are located in crisis residential and subacute residential settings with sixteen beds or fewer that provide immediate, short-term assessments for persons with serious mental illness or substance use disorders who do not need inpatient psychiatric hospital treatment, but who do need significant amounts of supports and services not available in the persons' homes or communities.
(2) Assertive community treatment services.
(3) Comprehensive facility and community-based crisis services, including all of the following:
(a) Mobile response.
(b) Twenty-three-hour crisis observation and holding.
(c) Crisis stabilization community-based services.
(d) Crisis stabilization residential services.
(4) Subacute services provided in facility and community-based settings.
(5) Intensive residential service homes for persons with severe and persistent mental illness in scattered site community-based residential settings that provide intensive services and that operate twenty-four hours a day.
b. The department shall accept arrangements between multiple regions sharing intensive mental health services under this subsection.
~~5.~~ 6. A region shall ensure that access is available to providers of core services that demonstrate competencies necessary for all of the following:
a. Serving persons with co-occurring conditions.
b. Providing evidence-based services.
c. Providing trauma-informed care that recognizes the presence of trauma symptoms in persons receiving services.
~~6.~~ 7. A region shall ensure that services within the following additional core service domains are available to persons not eligible for the medical assistance program under chapter 249A or receiving other third-party payment for the services, when public funds are made available for such services:
~~*a.* Comprehensive facility and community-based crisis services, including but not limited to all of the following:~~
~~(1) Twenty-four-hour crisis hotline.~~
~~(2) Mobile response.~~
~~(3) Twenty-three-hour crisis observation and holding, and crisis stabilization facility and community-based services.~~
~~(4) Crisis residential services.~~
~~*b.* Subacute services provided in facility and community-based settings.~~
~~*c.*~~ *a.* Justice system-involved services, including but not limited to all of the following:
(1) Jail diversion.
(2) Crisis intervention training.
(3) Civil commitment prescreening.
~~*d.*~~ *b.* Advances in the use of evidence-based treatment, including but not limited to all of the following:
(1) Positive behavior support.
~~(2) Assertive community treatment.~~
~~(3)~~ (2) Peer self-help drop-in centers.
~~7.~~ 8. A regional service system may provide funding for other appropriate services or other support and may implement demonstration projects for an initial period of up to three years to model the use of research-based practices. In considering whether to provide such funding, a region may consider the following criteria for research-based practices:
a. Applying a person-centered planning process to identify the need for the services or other support.

b. The efficacy of the services or other support is recognized as an evidence-based practice, is deemed to be an emerging and promising practice, or providing the services is part of a demonstration and will supply evidence as to the services' effectiveness.

c. A determination that the services or other support provides an effective alternative to existing services that have been shown by the evidence base to be ineffective, to not yield the desired outcome, or to not support the principles outlined in Olmstead v. L.C., 527 U.S. 581 (1999).

Sec. 14. Section 331.424A, subsection 9, Code 2018, is amended to read as follows:

9. *a.* For the fiscal year beginning July 1, 2017, and each subsequent fiscal year, the county budgeted amount determined for each county shall be the amount necessary to meet the county's financial obligations for the payment of services provided under the regional service system management plan approved pursuant to section 331.393, not to exceed an amount equal to the product of the regional per capita expenditure target amount multiplied by the county's population~~, and, for fiscal years beginning on or after July 1, 2021, reduced by the amount of the county's cash flow reduction amount for the fiscal year calculated under subsection 4, if applicable~~.

b. If a county officially joins a different region, the county's budgeted amount shall be the amount necessary to meet the county's financial obligations for payment of services provided under the new region's regional service system management plan approved pursuant to section 331.393, not to exceed an amount equal to the product of the new region's regional per capita expenditure target amount multiplied by the county's population. [1]

Sec. 15. DEPARTMENT OF HUMAN SERVICES — CIVIL COMMITMENT PRESCREENING ASSESSMENTS — RULES. The department of human services, in coordination with the mental health and disability services commission, shall adopt rules pursuant to chapter 17A relating to civil commitment prescreening assessments provided by a mental health and disability services region or an entity contracting with a mental health and disability service region. The rules shall provide for all of the following:

1. The provision of civil commitment prescreening assessments by a licensed physician or mental health professional within four hours of an emergency detention of an individual believed to be mentally ill to determine if inpatient psychiatric hospitalization is necessary.

2. The coordination of appropriate levels of care to include securing an inpatient psychiatric bed when inpatient psychiatric hospitalization is needed and utilizing community-based resources and services such as crisis observation and crisis stabilization services and subacute care and detoxification centers and facilitating outpatient treatment appointments when inpatient psychiatric hospitalization is not needed.

3. The provision of ongoing consultations by a licensed physician or mental health professional while the individual remains in the emergency room.

4. Requiring appropriate documentation and reports to be submitted by a licensed physician or mental health professional to a treating hospital and the court as necessary.

Sec. 16. PROGRAM IMPLEMENTATION — ADOPTION OF ADMINISTRATIVE RULES.

1. The department of human services shall submit a notice of intended action to the administrative rules coordinator and the Iowa administrative code editor pursuant to section 17A.4, subsection 1, paragraph "a", not later than August 15, 2018, for the adoption of rules to implement the standards of core services specified in this Act.

2. The provisions of this Act and rules adopted in accordance with this Act shall minimize any delay or disruption of services or plans for the implementation of such services in effect on July 1, 2018.

3. The rules adopted by the department relating to access centers shall provide for all of the following:

a. The access centers shall meet all of the following criteria:

(1) An access center shall serve individuals with a serious mental health or substance use disorder need who are otherwise medically stable, who are not in need of an inpatient

[1] See chapter 1172, §7 herein

psychiatric level of care, and who do not have alternative, safe, effective services immediately available.

(2) Access center services shall be provided on a no reject, no eject basis.

(3) An access center shall accept and serve individuals who are court-ordered to participate in mental health or substance use disorder treatment.

(4) Access center providers shall be accredited under 441 IAC 24 to provide crisis stabilization residential services and shall be licensed to provide subacute mental health services as defined in section 135G.1.

(5) An access center shall be licensed as a substance abuse treatment program pursuant to chapter 125 or have a cooperative agreement with and immediate access to licensed substance abuse treatment services or medical care that incorporates withdrawal management.

(6) An access center shall provide or arrange for the provision of necessary physical health services.

(7) An access center shall provide navigation and warm handoffs to the next service provider as well as linkages to needed services including housing, employment, and shelter services.

b. The rules shall include access center designation criteria and standards that allow and encourage multiple mental health and disability services regions to strategically locate and share access center services including bill-back provisions to provide for reimbursement of a region when the resident of another region utilizes an access center or other non-Medicaid covered services located in that region.

4. The department shall establish uniform, statewide standards for assertive community treatment based on national accreditation standards, including allowances for nationally recognized small team standards. The statewide standards shall require that assertive teams meet fidelity to nationally recognized practice standards as determined by an independent review of each team that includes peer review. The department shall ensure that Medicaid managed care organization utilization management requirements do not exceed the standards developed by the department.

5. The rules relating to intensive residential service homes shall provide for all of the following:

a. That an intensive residential service home be enrolled with the Iowa Medicaid enterprise as a section 1915(i) home and community-based services habilitation waiver or intellectual disability waiver-supported community living provider.

b. That an intensive residential service home have adequate staffing that includes appropriate specialty training including applied behavior analysis as appropriate.

c. Coordination with the individual's clinical mental health and physical health treatment.

d. Be licensed as a substance abuse treatment program pursuant to chapter 125 or have a cooperative agreement with and timely access to licensed substance abuse treatment services for those with a demonstrated need.

e. Accept court-ordered commitments.

f. Have a no reject, no eject policy for an individual referred to the home based on the severity of the individual's mental health or co-occurring needs.

g. Be smaller in size, preferably providing services to four or fewer individuals and no more than sixteen individuals, and be located in a neighborhood setting to maximize community integration and natural supports.

h. The department of human services shall provide guidance for objective utilization review criteria.

6. The department of human services and the department of public health shall provide a single statewide twenty-four-hour crisis hotline that incorporates warmline services which may be provided through expansion of the YourLifeIowa platform.

Sec. 17. COMMITMENT PROCESS REVIEW. The department of human services, in cooperation with the department of public health, representative members of the judicial branch, the Iowa hospital association, the Iowa medical society, the national alliance on mental illness, the Iowa state sheriffs' and deputies' association, Iowa behavioral health association, and other affected or interested stakeholders shall review the commitment processes under chapters 125 and 229 and shall report recommendations for improvements

in the processes and any amendments to law to increase efficiencies and more appropriately utilize the array of mental health and disability services available based upon an individual's needs to the governor and the general assembly by December 31, 2018.

Sec. 18. TERTIARY CARE PSYCHIATRIC HOSPITALS. The departments of human services and inspections and appeals, representative members of the Iowa hospital association, managed care organizations, the national alliance on mental illness, the mental health institutes, and other affected or interested stakeholders shall review the role of tertiary care psychiatric hospitals in the array of mental health services and shall report recommendations for providing tertiary psychiatric services to the governor and the general assembly by November 30, 2018. The recommendations shall address the role and responsibilities of tertiary care psychiatric hospitals in the mental health array of services in the state, the viability of utilizing the mental health institutes as tertiary care psychiatric hospitals, any potential sustainable funding, and admissions criteria.

Sec. 19. MENTAL HEALTH AND DISABILITY SERVICES FUNDING — FISCAL VIABILITY REVIEW DURING 2018 LEGISLATIVE INTERIM. The legislative council is requested to authorize a study committee to analyze the viability of the mental health and disability services funding including the methodology used to calculate and determine the base expenditure amount, the county budgeted amount, the regional per capita expenditure amount, the statewide per capita expenditure target amount, and the cash flow reduction amount. The study committee shall consist of five members of the senate, three of whom shall be appointed by the majority leader of the senate and two of whom shall be appointed by the minority leader of the senate, and five members of the house of representatives, three of whom shall be appointed by the speaker of the house of representatives and two of whom shall be appointed by the minority leader of the house of representatives. The study committee shall meet during the 2018 legislative interim to make appropriate recommendations for consideration during the 2019 legislative session in a report submitted to the general assembly by January 15, 2019.

Sec. 20. DIRECTIVE TO DEPARTMENT OF HUMAN SERVICES — PSYCHIATRIC BED TRACKING SYSTEM. The department of human services shall amend its administrative rules pursuant to chapter 17A to require subacute mental health care facilities to participate in the psychiatric bed tracking system and to report the number of beds available for children and adults with a co-occurring mental illness and substance abuse disorder.

Sec. 21. ASSERTIVE COMMUNITY TREATMENT — REIMBURSEMENT RATES. The department of human services shall review the reimbursement rates for assertive community treatment and shall report recommendations for reimbursement rates to the governor and the general assembly by December 15, 2018. The recommendations shall address any potential sustainable funding.

Sec. 22. DEPARTMENT OF HUMAN SERVICES. The department of human services shall adopt rules pursuant to chapter 17A to administer this Act.

Approved March 29, 2018