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Senate Bill 826 (as introduced 3-10-20)  
Sponsor: Senator Curtis S. VanderWall  
Committee: Health Policy and Human Services

Date Completed: 6-4-20

### **CONTENT**

**The bill would amend the Mental Health Code to do the following:**

- **Expand the definition of "mental health professional" to include a physician assistant, a certified nurse practitioner, and a clinical nurse specialist-certified.**
- **Allow certain physical examinations to be conducted by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.**
- **Allow clinical certificates executed by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified to be accepted in certain situations.**
- **Modify various definitions.**

The bill would take effect 90 days after its enactment.

### **Mental Health Professionals**

Currently, the Mental Health Code defines "mental health professional" as an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is one of the following:

- A physician.
- A psychologist.
- A registered professional nurse.
- A licensed master's social worker.
- A licensed professional counselor.
- A licensed marriage and family therapist.

Under the bill, the term also would include the following:

- A physician assistant.
- A certified nurse practitioner.
- A clinical nurse specialist-certified.

"Physician assistant" would mean an individual practicing as a physician's assistant as that term is defined in Sections 17001 and 17501 of the Public Health Code. (Under Section 17001, "practice as a physician's assistant" means the practice of medicine with a participating physician under a practice agreement. Section 17501 defines "practice as a physician's assistant" as the practice of osteopathic medicine and surgery with a participating physician under a practice agreement.) "Certified nurse practitioner" would mean a registered

professional nurse who holds a specialty certification as a nurse practitioner. "Clinical nurse specialist-certified" would mean an individual who is licensed as a registered professional nurse who has been granted a specialty certification as a clinical nurse specialist.

### Involuntary Treatment

Under the Code, after receiving a petition for involuntary treatment of a person for a substance use disorder and the payment of a filing fee, if any, a court must examine the petitioner under oath as to the contents of the petition. If, after reviewing the petition and examining the petitioner, it appears to the court that there is probable cause to believe the respondent may reasonably benefit from treatment, the court must, among other things, do the following:

- Notify the respondent that the court will cause him or her to be examined, within 24 hours before the hearing, by a physician for the purpose of a physical examination, and by an independent health professional for the purpose of a substance use disorder assessment and diagnosis.
- Cause the respondent to be examined as described above.

Under the bill, a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified also could perform the physical examination.

The Code requires the physician who examined the respondent for the purpose of a physical examination, the health professional who examined the respondent for the purpose of the substance use disorder assessment and diagnosis, and, if applicable, the individual who conducted the independent expert evaluation of the respondent's physical and mental conditions at the respondent's expense, to certify their findings to the court within 24 hours after the examination. The findings must include a recommendation for treatment if the physician, health professional, or individual determined that treatment was necessary.

Under the bill, these provisions also would apply to a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified who performed the physical examination.

### Formal Voluntary Admission

The Code prohibits a formal voluntary patient 18 years of age or over from being hospitalized more than three days, excluding Sundays and holidays, after the patient gives written notice of the intention to terminate the hospitalization. When a hospital is told of an intention to terminate hospitalization, it must provide the patient with the written form required under the Code.

After receiving a notice of termination, if it is determined by the hospital director that the patient is a person requiring treatment and should remain in the hospital, the director must file a petition with the court within three days of the notice of termination, accompanied by one clinical certificate executed by a psychiatrist and one clinical certificate executed by either a physician or a licensed psychologist. Treatment may continue pending hearings.

Under the bill, instead of a clinical certificate executed by a physician or a licensed psychologist, the director could submit a certificate executed by a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

The Code defines "clinical certificate" as the written conclusion and statements of a physician or a licensed psychologist that an individual is a person requiring treatment, together with the information and opinions, in reasonable detail, that underlie the conclusion, on a form

prescribed by the Department of Health and Human Services (DHHS) or on a substantially similar form. Under the bill, the term also would include the written conclusion and statements of a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified providing the above information.

The Code defines "licensed psychologist" as a doctoral level psychologist licensed under Section 18223(1) of the Public Health Code. Under the bill, the term also would mean an individual who is licensed or otherwise authorized to engage in the practice of psychology and who devotes a substantial portion of his or her time to the diagnosis and treatment of individuals with serious mental illness, serious emotional disturbance, substance use disorder, or developmental disability.

#### Admission by Medical Certification

The Code requires a hospital designated by the DHHS or by a community mental health services program (CMHSP) to hospitalize an individual presented to the hospital, pending receipt of a clinical certificate by a psychiatrist stating that the individual is a person requiring treatment, if a petition, a physician's or licensed psychologist's clinical certificate, and an authorization by a preadmission screening unit have been executed.

The bill would refer to a physician's, *physician assistant's*, *certified nurse practitioner's*, *clinical nurse specialist-certified's*, or a licensed psychologist's clinical certificate.

Under the Code, a physician's or licensed psychologist's clinical certificate required for an individual's hospitalization must have been executed after personal examination of the individual named in the certificate, and within 72 hours before the time the certificate is received by the hospital. The clinical certificate may be executed by any physician or licensed psychologist, including a staff member or employee of the hospital that received it. Under the bill, the clinical certificate also could be executed by a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

The Code allows, under certain circumstances, a peace officer to take an individual into protective custody and transport him or her to a preadmission screening unit or hospital for examination, mental health intervention services, or hospitalization. After arriving at the preadmission screening unit or site designated by the preadmission screening unit, the peace officer must execute a petition for the hospitalization of the individual. In all cases where a peace officer has executed a petition, the preadmission screening unit must ensure an examination is conducted by a physician or licensed psychologist. Under the bill, the required examination also could be conducted by a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

The Code requires each CMHSP to designate hospitals with which it has a contract to receive and detain individuals, and requires the DHHS to designate any additional hospitals that are required to receive and detain individuals presented for examination. A designated hospital must receive and detain an individual presented for examination for not more than 24 hours. During that time, the individual must be examined by a physician or a licensed psychologist.

If the examining physician or licensed psychologist does not certify that the individual is a person requiring treatment, the individual must be released immediately. If the examining physician or licensed psychologist executes a clinical certificate, the individual may be hospitalized for treatment.

The bill would allow an examination described above to be conducted by a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

Under the Code, if a patient is hospitalized, he or she must be examined by a psychiatrist as soon after hospitalization as practicable, but within 24 hours, excluding legal holidays, after hospitalization. The examining psychiatrist may not be the same physician upon whose clinical certificate the patient was hospitalized. Under the bill, the psychiatrist also could not be the same physician assistant, certified nurse practitioner, or clinical nurse specialist-certified upon whose clinical certificate the patient was hospitalized.

#### Admission by Petition

The Code allows any individual 18 years of age or over to file with the court a petition containing certain specified information that asserts that an individual is a person requiring treatment. Except as otherwise provided, the petition must be accompanied by the clinical certificate of a physician or a licensed psychologist. Under the bill, a petition could be accompanied by the clinical certificate of a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified, instead of a certificate of a physician or licensed psychologist.

Under the Code, if a petition is accompanied by a clinical certificate, the court must order the individual to be examined by a psychiatrist. If a petition is not accompanied by a clinical certificate, and if the court is satisfied that a reasonable effort was made to secure an examination, the court must order the individual to be examined by a psychiatrist and either a physician or a licensed psychologist. After each examination, the examining psychiatrist, or the examining physician or licensed psychologist, as applicable, must transmit a clinical certificate to the court or report to the court that execution of a clinical certificate is not warranted. If one examination was ordered and the examining psychiatrist reports that execution of a clinical certificate is not warranted, or if two examinations were ordered and one of the examining physicians or licensed psychologist reports that execution of a clinical certificate is not warranted, the court must dismiss the petition or order the individual to be examined by a psychiatrist, or if a psychiatrist is not available, by a physician or licensed psychologist.

Under the bill, an examination required to be conducted by a physician or a licensed psychologist, instead, could be conducted by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.

The Code also allows the court to order an individual hospitalized if it appears that the individual requires immediate assessment because he or she presents a substantial risk of significant physical or mental harm to himself or herself in the near future or presents a substantial risk of significant physical harm to others in the near future. If the examinations and clinical certificates of the psychiatrist, and the physician or the licensed psychologist, are not completed within 24 hours after hospitalization, the individual must be released. Under the bill, this provision also would apply to examinations and clinical certificate of a physician assistant, a certified nurse practitioner, and a clinical nurse specialist-certified not completed within 24 hours.

#### Court Hearings

A court must fix a date for every hearing convened under Chapter 4 (Civil Admissions and Discharge Procedures: Mental Illness) of the Code. Except as otherwise provided, the hearing must be convened promptly, but within seven days after the court receives certain petitions, including a petition for a determination that an individual is a person requiring treatment, a clinical certificate executed by a physician or a licensed psychologist, and a clinical certificate executed by a psychiatrist. Under the bill, this provision also would pertain to clinical

certificates executed by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.

The Code specifies that an individual may not be found to require treatment unless at least one physician or licensed psychologist who has personally examined that individual testifies in person or by written deposition at the hearing. For a petition that does not seek hospitalization before the hearing, an individual may not be found to require treatment unless a psychiatrist who has personally examined the individual testifies. A psychiatrist's testimony is not necessary if a psychiatrist signs the petition. If a psychiatrist signs it, at least one physician or licensed psychologist who has personally examined the individual must testify.

Under the bill, these provisions also would apply if a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified had personally examined the individual.

The Code allows the requirement for testimony to be waived by the subject of the petition. If testimony given in person is waived, a clinical certificate completed by a physician, licensed psychologist or psychiatrist must be presented to the court before or at the initial hearing. Under the bill, a clinical certificate completed by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified who had personally examined the individual also would have to be presented.

Under the Code, if requested before the first scheduled hearing or at the first scheduled hearing before the first witness has been sworn on a petition, the subject of the petition has the right to secure an independent clinical evaluation by a physician, psychiatrist, or licensed psychologist of his or her choice. Compensation for an independent evaluation must be in an amount that is reasonable and based upon time and expenses. The bill also would allow the subject of a petition to seek an independent clinical evaluation by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.

#### Continued Hospitalization of Minors

Chapter 4A (Civil Admission and Discharge Procedures for Emotionally Disturbed Minors) of the Code generally governs the hospitalization of minors. Except as otherwise provided, a minor hospitalized under Chapter 4A may not be kept in the hospital for more than three days, excluding Sundays and holidays, after the hospital received written notice of intent to terminate the hospitalization of the minor executed by his or her parent, guardian, or person in loco parentis or by the minor if the minor is 14 years of age or older and was admitted to the hospital upon his or her own request.

If a hospital receives notice of intent to terminate hospitalization, and the director of the hospital determines that the minor to whom the notice applies should remain in the hospital, the director or his or her designee must file, within three days, excluding Sundays and holidays, after receiving the notice, a petition with the court requesting an order to continue hospitalization of the minor. The petition must be accompanied by one certificate executed by a child adolescent psychiatrist and one certificate executed by either a physician or a licensed psychologist. Under the bill, the required certificate executed by either a physician or licensed psychologist also could be executed by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.

#### Intellectual Disability Treatment

The Code allows a court to order appropriate outpatient treatment or admission into an appropriate treatment facility of an individual 18 years of age or older if he or she has been diagnosed with an intellectual disability, and either of the following applies:

- He or she can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another person, and has overtly acted in a manner substantially supportive of that expectation.
- He or she has been arrested and charged with an offense that was a result of the intellectual disability.

An individual whose admission to a CMHSP is ordered is entitled to a hearing. The individual asserted to meet the criteria for treatment is entitled to be represented by legal counsel, and also is entitled to, among other things, both of the following:

- To require testimony in court in person from one physician or one psychologist who had personally examined the individual.
- To receive an independent examination by a physician or licensed psychologist of his or her choice on the issue of whether he or she meets the criteria for treatment.

Under the bill, the in-person testimony also could be from one physician assistant, one certified nurse practitioner, or one clinical nurse specialist-certified who had personally examined the individual. The independent examination also could be conducted by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified.

#### Periodic Review

Under the Code, every resident admitted by court order has the right to regular, adequate, and prompt review of his or her current status as an individual meeting the criteria for treatment. Six months after the date of an order of treatment, and every 6 months after that, the director of a facility to which a resident was admitted must review the resident's status as an individual meeting the criteria for treatment.

In addition to the right to the six-month review, a resident admitted by court order has a right to a hearing and may petition the court for discharge without leave of court once within each 12-month period from the date of the original order of admission. The petition must be accompanied by a physician's or a licensed psychologist's report setting for the reason for his or her conclusion that the resident no longer meets the criteria for judicial treatment. Under the bill, the petition would have to be accompanied by a physician's, *a physician assistant's*, *a certified nurse practitioner's*, *a clinical nurse specialist-certified's*, or a licensed psychologist's report.

#### Physical Restraint

The Code prohibits a resident from being placed in physical restraint except in the circumstances and under the conditions specified in Chapter 7 (Rights of Recipients of Mental Health Services).

Among other criteria, a resident may be temporarily restrained for a maximum of 30 minutes without an order or authorization in an emergency. Immediately after imposition of the temporary restraint, a physician must be contacted. If, after being contacted, the physician does not order or authorize the restraint, it must be removed. Under the bill, a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified could be contacted, instead of a physician.

Under the Code, a resident may be restrained before examination pursuant to an authorization by a physician. An authorized restraint may continue only until a physician can examine the resident personally or for two hours, whichever is less. If it is not possible for the physician

to examine the resident within two hours, a physician may reauthorize the restraint for another two hours. Authorized restraint may not continue for more than four hours.

Under the bill, a resident also could be restrained before examination pursuant to an authorization from a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified. Also, the examination described above also could be performed by a physician assistant, a certified nurse practitioner, a clinical nurse specialist-certified, or a registered professional nurse who was trained in accordance with the requirements of Title 42 CFR 482.13(f). (Title 42 CFR 482.13(f) requires, among other things, staff to be trained and able to demonstrate competency in the application of restraints, implementation of seclusion, monitoring, assessment, and providing care for a patient in restraint or seclusion.)

"Registered professional nurse" would mean that term as defined in Section 17201 of the Public Health Code: an individual who is licensed under Part 172 (Nursing) to engage in the practice of nursing which scope of practice includes the teaching, direction, and supervision, of less skilled personnel in the performance of delegated nursing activities.

The Code also allows a resident to be restrained pursuant to an order by a physician made after personal examination of the resident. An ordered restraint shall continue only for that period of time specified in the order or for eight hours, whichever is less. Under the bill, this provision also would apply to an order by a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified after personal examination of the resident.

### Seclusion

Under the Code, seclusion may use by used only in a hospital, center, or licensed child caring institution. ("Center" means a facility operated by the DHHS to admit individuals with developmental disabilities and provide habilitation and treatment services.) A resident placed in a hospital or center may not be kept in seclusion except in the circumstances and under the conditions set forth in Chapter 7. A minor placed in a child caring institution may not be placed or kept in seclusion except as provided in the child care licensing Act or rules promulgated under it.

A resident may be placed in seclusion under an authorization by a physician. Authorized seclusion may continue only until a physician can personally examine the resident or for one hour, whichever is less. Under the bill, a resident also could be placed in seclusion under an authorization by a physician assistant, a certified nurse practitioner, or a clinical nurse specialist-certified. Also, the examination described above could also be performed by a physician assistant, a certified nurse practitioner, a clinical nurse specialist-certified, or a registered professional nurse who was trained in accordance with the requirements of Title 42 CFR 482.13(f).

The Code also allows a resident to be placed in seclusion under an order of a physician made after personal examination of the resident to determine if the seclusion poses an undue health risk to the resident. Under the bill, this provision also would apply under an order of a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified after personal examination of the resident.

### Miscellaneous Definitions

The Code defines "competent clinical opinion" as the clinical judgment of a physician, psychiatrist, or licensed psychologist. Under the bill, the term also would include the clinical judgment of a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

Under the Code, "privileged communication" means a communication made to a psychiatrist or licensed psychologist in connection with examination, diagnosis, or treatment of a patient, or to another person while the other person is participating in the examination, diagnosis, or treatment or a communication made privileged under other applicable State or Federal law. Under the bill, the term also would include a communication described above made to a physician assistant, certified nurse practitioner, or clinical nurse specialist-certified.

Under Chapter 1 (Department of Mental Health), "alcohol and drug abuse counseling" means the act of counseling, modification of substance use disorder related behavior, and prevention for individuals with substance use disorder, their significant others, and individuals who could potentially develop a substance use disorder. The bill would delete this term.

MCL 330.1100a et al.

Legislative Analyst: Stephen Jackson

### **FISCAL IMPACT**

The bill would have no fiscal impact on the DHHS or local units of government. The expansion of the definition of "mental health professional" to include a physician assistant, certified nurse practitioner or clinical nurse specialist-certified, and ability for those mental health professionals to perform the activities described in the bill would not increase the number of petitions heard by a court and, therefore, would not result in an increase in the number of individuals receiving services through a CMHSP.

The bill could have a minor negative fiscal impact on the Department of Licensing and Regulatory Affairs. The bill adds several professions to the list of licensees who may perform certain activities, such as the medical examination of a petitioner pursuing treatment or the issuer of a clinical certificate. The addition of these individuals as performers of these activities could result in an increase in complaints received by the Department. The processing and investigation of complaints, as well as overall compliance monitoring for these activities, could result in minor cost increases. However, it is likely that these activities would be covered sufficiently by existing appropriations and staff.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.