NEW LAW RELATING TO COMMUNITY MENTAL HEALTH SERVICES (1993 WISCONSIN ACT 445)

Information Memorandum 94-25

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INTRODUCTION

This Information Memorandum describes 1993 Wisconsin Act 445, relating to community mental health services. Act 445, signed into law on April 27, 1994, took effect on May 12, 1994.

Highlights of Act 445 include:

1. A directive to the Department of Health and Social Services (DHSS) to develop: human services and community programs ***board member training***; a ***model community mental health plan***; and rules regarding changes in the ***program certification*** process.

2. An ***expansion and revision of rights*** of patients receiving mental health services.

3. A revision of statutes relating to ***abuse, neglect and misappropriation of property*** of vulnerable adults and patients and residents of certain programs and facilities.

4. A new procedure for ***receivership*** of county departments of community programs and related programs, when necessary to address an emergency.

5. Creation of ***penalties*** for the intentional ***destruction, damage, concealment or falsification*** of treatment records and patient health care records.

6. Provision for appointment of ***consumers*** or their ***family members*** to human services or community programs boards.

Copies of Act 445 may be obtained from the Documents Room, Lower Level, One East Main Street, Madison, Wisconsin 53702; telephone: (608) 266-2400.

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* This Information Memorandum was prepared by Laura Rose, Senior Staff Attorney, Legislative Council Staff.

This Memorandum is divided into the following parts:

PART I

BACKGROUND

The legislation which became 1993 Wisconsin Act 445 (1993 Assembly Bill 900) was developed by the Legislative Council's 1992-93 Special Committee on Oversight of Community Mental Health Services. The Special Committee was directed to review state oversight of the management and delivery of community mental health services and to recommend any necessary changes in state laws and policies relating to oversight that will enhance the delivery of mental health programs and services at the county level.

During its deliberations, the Special Committee met 11 times. The Special Committee developed 20 bill drafts which Chairperson Shirley Krug directed be combined into one bill, 1993 Assembly Bill 900. The Special Committee also developed 1993 Assembly Joint Resolutions 101 and 102.

Assembly Bill 900 was introduced by the Legislative Council on October 7, 1993 and referred to the Assembly Committee on Children and Human Services. In executive action taken on the Bill on February 21, 1994, the Committee adopted Assembly Substitute Amendment 1 to the Bill and voted to recommend passage of the Bill, as amended, by a vote of Ayes, 7; and Noes, 0. The Bill was referred to the Joint Committee on Finance which held an executive session on the Bill on March 14, 1994. The Committee recommended adoption of Assembly Substitute Amendment 2 to the Bill and recommended passage of the Bill, as amended, by a vote of Ayes, 14; and Noes, 2.

On March 17, 1994, the Assembly adopted Assembly Substitute Amendment 2 to the Bill, as amended by Assembly Amendments 1 and 2 to the Substitute Amendment and passed the Bill, as amended, by a vote of Ayes, 99; and Noes, 0. The Bill was messaged to the Senate and referred to the Senate Committee on Health, Human Services and Aging, which recommended concurrence in the Bill, as amended, by a vote of Ayes, 7; and Noes, 0. The Senate concurred in the Bill, as amended, on March 25, 1994, by a vote of Ayes, 33; and Noes, 0. Assembly Bill 900 was signed into law by the Governor, with partial veto, on April 27, 1994.

PART II

PROVISIONS OF 1993 WISCONSIN ACT 445

A. DEPARTMENT OF HEALTH AND SOCIAL SERVICES PROGRAM CERTIFICATION, REVIEW AND OVERSIGHT

1. Board Member Training

Under current law, the DHSS is required to provide consultative staff services to communities to assist in ascertaining local needs and in planning, establishing and operating programs. Accordingly, the DHSS has provided some training for human services and community programs board members since 1991.

Under the Act, the DHSS is directed to develop a training curriculum, by 12 months after the effective date of the Act, for members of human services and community programs boards. The training must delineate board member roles and responsibilities, as well as provide information on client groups served and programs provided by human services or community programs departments. The DHSS must submit the training curriculum to the State Council on Mental Health for its review and comment. The DHSS is required to develop a training schedule to ensure that all board members in the state have access to the training once every two years.

2. Community Mental Health Plan

Current law requires county departments of community programs to prepare a community plan which includes an inventory of all existing resources, identifies needed new resources and services and contains a plan for meeting the needs of persons with various disabilities. However, since the abolition of the Coordinated Plan and Budget by 1985 Wisconsin Act 120, plans have not been systematically developed by counties, nor submitted to any state entity for any review.

This Act requires the DHSS, in consultation with the State Council on Mental Health and other entities, to develop a model community mental health plan for use by counties. Counties would be required to submit their mental health plans to DHSS and the State Council on Mental Health for review once every three years.

3. Program Certification and Review

Current law requires the DHSS to periodically review and certify county departments of community programs. Currently, programs are reviewed on a two-year cycle. The Act requires that the periodic review of community mental health programs shall be based on a three-year cycle. The purpose of this is to provide a more intensive review of mental health services in each county at least once in the three-year cycle. However, the Act also allows the Secretary of Health and Social Services to require an annual review of a community mental health program which did not substantially comply with the standards for a certified program within the preceding three-year

cycle. In addition, the Act also allows the Secretary to waive an annual review for a county program which substantially complied with standards for a certified program within the preceding three-year cycle. Finally, the Act permits the DHSS to review and evaluate any community mental health program at any time, and requires the DHSS to review and evaluate at random at least five community mental health programs each year, with or without notice to the programs.

The Act also directs the DHSS to promulgate rules regarding certain aspects of the program certification process. First, programs would be required to demonstrate that staff have knowledge of relevant laws, regulations and standards of practice relating to their particular programs and clients. Second, certification staff would be required to use a random selection process in their review of client records, rather than reviewing records selected by program staff. Third, certification staff would be required to conduct client interviews as part of the certification process. Fourth, certification staff would be required to share certification results for programs reviewed with county departments and with the DHSS subunits which perform program monitoring functions.

Current law requires each county department to operate a community support program (CSP) for persons who have mental illness. A program must be certified in order to receive Medical Assistance (MA) funding. However, a CSP is not required to be MA-certified.

The Act provides $89,100 general purpose revenue (GPR) and $136,200 FED in 1993-94 and $186,900 GPR and $280,000 FED in 1994-95 for an appropriation to DHSS to provide grants to counties which do not currently operate MA-certified CSP's. The funds would enable counties to meet the certification requirement.

The Act also requires the DHSS to develop a program to permit the voluntary, uncompensated use of licensed or certified professionals to assist the DHSS in evaluating and certifying community mental health services. Professionals licensed or certified by the Medical Examining Board and the Psychology Examining Board who assist with program certifications would be eligible for continuing education credits for these activities.

B. PATIENTS' RIGHTS AND GRIEVANCE PROCEDURES

Current law, under s. 51.61, Stats., enumerates the rights of patients of receiving mental health services. The Act expands and modifies these rights. Rights expanded or modified include the right to have access to a telephone; to present grievances; to participate in the planning of treatment or care; to manage financial affairs; to be informed of services included in charges; and to be treated with respect by staff and providers.

The Act provides protection for employes or others who report violations of patients' rights. The Act also requires each county department of community programs to tabulate complaints of violations of patients' rights and their disposition as part of the certification process for community mental health programs and treatment facilities.

Current law requires the DHSS to establish procedures to protect patients' rights enumerated in ch. 51, Stats., and also requires the DHSS to implement a grievance procedure to assure patients'

rights are protected and enforced by the DHSS, service providers and county departments. The DHSS has promulgated administrative rules directing county departments and providers to establish grievance procedures, but no detailed standards for these grievance procedures are set forth by rule. The Act requires DHSS to establish standards for grievance procedures for patients and sets out required components of the grievance procedure. It also provides for an appeals procedure beyond the county department or other provider of services. Appeals would be made to the DHSS.

Current law provides for civil penalties for denial or violation of patients' rights. The Act creates a new penalty, whereby any person who intentionally deprives a patient of the ability to seek redress for a violation of his or her rights may be fined not more than $1,000, imprisoned for not more than six months, or both.

Current law provides that the Governor must designate a private, nonprofit organization as a protection and advocacy agency for persons with mental illness and developmental disabilities. Currently, advocacy for persons with mental illness is limited to those who are inpatients or residents in a facility rendering care or treatment.

The Act establishes a pilot program for community mental health protection and advocacy services. $50,000 GPR for each year of the 1993-95 biennium is provided to fund the pilot program.

C. ABUSE, NEGLECT AND MALTREATMENT

1. Crimes Relating to Abuse, Neglect and Maltreatment

Current law, in s. 940.285, Stats., provides that any person, other than a person in charge of or employed in certain designated facilities who intentionally subjects a vulnerable adult to cruel maltreatment, is guilty of a Class A misdemeanor (a fine not to exceed $10,000, imprisonment not to exceed nine months, or both).

The Act revises s. 940.285, Stats. The revisions differentiate between the intentional and reckless maltreatment of a vulnerable adult. In addition, the penalty structure for violations for s. 940.285, Stats., is revised. Penalties vary depending on whether the maltreatment is intentional or reckless and what degree of bodily harm is caused to the vulnerable adult.

Also, under current law, s. 940.29, Stats., provides that any person in charge of or employed in certain designated facilities who abuses, neglects or ill-treats any person who is confined in or is a resident of the facility, or who knowingly permits another person to do so, is guilty of a Class E felony (a fine not to exceed $10,000, imprisonment not to exceed two years, or both).

The Act revises s. 940.29, Stats., to make it applicable only to penal or correctional facilities. The Act then creates s. 940.295, Stats., which provides that any person in charge of or employed by facilities in current s. 940.29 (other than penal or correctional facilities), plus certain

additional facilities and programs, who intentionally or recklessly abuses or neglects a patient or resident is guilty of a crime.

Under the Act, "intentional abuse" means any of the following, if done intentionally:

a. An act, omission or course of conduct by another that is not reasonably necessary for treatment or maintenance of order or discipline in a covered program or facility and that does at least one of the following:

(1) Results in bodily harm or great bodily harm to a patient or resident.

(2) Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

b. The forcible administration of medication to or the performance of psychosurgery, electroconvulsive therapy or experimental research on a patient or resident with the knowledge that no lawful authority exists for the administration or performance.

Under the Act, "reckless abuse" means an act, omission or course of conduct by another, if done recklessly, that is not reasonably necessary for treatment or maintenance of safety, order or discipline in a program or facility and that does at least one of the following:

a. Results in bodily harm or great bodily harm to a patient or resident.

b. Intimidates, humiliates, threatens, frightens or otherwise harasses a patient or resident.

The Act defines "neglect" as follows:

> "Neglect" means an act, omission or course of conduct by another that, because of the failure to provide adequate food, shelter, clothing, medical care or dental care, creates a significant danger to the physical or medical health of a patient or resident.

Under the Act, penalties for intentional or reckless abuse or neglect vary depending on the degree of bodily harm caused and whether the abuse or neglect is intentional or reckless. These provisions apply to persons in charge of or employed by any of the following types of facilities or programs:

a. An adult day care center.

b. An adult family home.

c. A community-based residential facility.

d. A foster home.

e. A group home.

f. A home health agency.

g. A hospice.

h. An inpatient health care facility.

i. A program under s. 51.42 (2), Stats.

j. A state school for the visually handicapped or hearing impaired.

k. A state treatment facility.

l. A treatment facility.

m. An institution operated by a child welfare agency licensed under s. 48.60, Stats., or by a public agency for the care of neglected, dependent or delinquent children.

n. Any other health facility or care-related facility or home, whether publicly or privately owned.

2. Investigation of Abuse, Neglect or Misappropriation of Property of a Vulnerable Adult

The Act creates a procedure whereby the county protective services agency in Milwaukee County is authorized to conduct an investigation if it has probable cause to believe that there is abuse, neglect or misappropriation of property of a vulnerable adult. It also provides for the assistance of local law enforcement officials, a restraining order or injunction to prevent interference with the investigation and a court order for entry to the residence of the vulnerable adult. If, after investigation, the county protective services agency finds abuse, neglect or misappropriation of property, the agency is authorized to offer or arrange for a variety of protective services.

D. RECEIVERSHIP

Current law provides a procedure for placement of a monitor and appointment of a receiver in a nursing home or a community-based residential facility (CBRF). The Act provides for the appointment of a receiver for a county department of community programs or a related program (defined as a program operated by a county department or a program operated under a contract with a county department). The procedure is modeled after the procedure for appointment of a nursing home and CBRF receiver under current law.

The Act provides for the appointment of a receiver for a county department or related program when the appointment of the receiver is necessary to address an emergency, which is defined as a "situation, physical condition or one or more practices, methods or operations, that present imminent danger of death or serious physical or mental harm to a consumer of mental

health, alcoholism, developmental disabilities or drug abuse services of a county department of community programs."

In order to have a receiver appointed, the DHSS must petition for a court order. If a receiver is placed in a county department or related program, it must operate the program in such a manner as to ensure safety and adequate care for consumers. Receivership may be terminated if the time period specified in the order appointing the receiver, and any extensions granted by the court, elapses and if the receiver determines and notifies the court that the county department or related program is able to ensure continued compliance with federal and state statutes, regulations and rules.

The receivership provisions of the Act sunset six years after the Act's effective date.

E. PATIENT HEALTH CARE RECORDS AND TREATMENT RECORDS

Under current law, no penalty is provided for the intentional destruction, damage, concealment or falsification of patient health care records, as defined in s. 146.81 (4), Stats., or of treatment records of persons receiving services for mental illness, developmental disabilities, alcoholism or drug dependence which are maintained by the DHSS, county departments and treatment facilities.

The Act provides that any person who does any of the following shall be fined not more than $1,000, imprisoned not more than six months, or both:

1. Intentionally falsifies a patient health care record or treatment record.

2. Conceals or withholds a patient health care record or treatment record with intent to prevent its release to the subject individual, to his or her guardian appointed under ch. 880 or to persons with the informed written consent of the subject individual or with intent to prevent or obstruct an investigation or prosecution.

3. Intentionally destroys or damages a patient health care record or treatment record in order to prevent or obstruct an investigation or prosecution.

4. Requests or obtains confidential information in patient health care records or treatment records under false pretenses.

5. Discloses confidential information in patient health care records or treatment records with knowledge that the disclosure is unlawful and is not reasonably necessary to protect another from harm.

F. CONSUMER PARTICIPATION

Current law designates the composition of county human services boards and county community program boards. County human services boards are required to have representation from consumers of services or citizens-at-large. County community program boards are required to have representatives from various disability interest groups.

The Act provides that, for single- and multi-county departments of human services and single- and multi-county departments of community programs, at least one member appointed to these governing boards shall be a consumer (an individual who receives or has received human services or services for mental illness, developmental disabilities, alcoholism or drug dependency), or a family member of such a consumer.

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