

SECURITY TRANSPORT OFFICERS FOR INVOLUNTARY MENTAL HEALTH SERVICES

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House Bill 4414 (H-2) as reported from committee
Sponsor: Rep. Beau Matthew LaFave
Committee: Health Policy
Complete to 6-20-22

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 4414 (H-2), which is identical to Senate Bill 101 (H-2), would add a new section to the Mental Health Code to allow a county board of commissioners to establish a county mental health transportation panel for the purpose of establishing a transportation mechanism to serve as an alternative to a peace officer transporting an individual when required under the code. The bill also would create the Mental Health Transportation Fund and revise several provisions that now provide for transport of individuals only by a peace officer to apply also to a security transport officer.

County mental health transportation panel

The bill would require that a county mental health transportation panel include a county administrator, a judge of a court with jurisdiction in the county, a peace officer at a law enforcement agency or state police post in the county, and a mental health professional employed by a community mental health services program (CMHSP) in the county. A panel could recommend a contract with a private security company to hire *security transport officers* to transport individuals for involuntary psychiatric hospitalization or screening. The county board of commissioners could enter into a contract only upon the panel's recommendation.

Security transport officer would mean an officer employed by a private security company under contract with a county under provisions proposed by the bills.

Private security company providing security transport officers

A private security company that entered into a contract would be an independent contractor and not an employee, officer, or agent of the county or the county mental health transportation panel. Similarly, a security transport officer would not be an employee, officer, agent, or independent contractor of the county or the county mental health transportation panel.

To enter into a contract with a county board of commissioners, a private security company would have to meet the following requirements:

- Maintain a required level of insurance coverage on file with the Department of Health and Human Services (DHHS) regarding motor vehicle coverage, motor vehicle residual liability coverage, and liability other than for a motor vehicle. The insurer of the private security company would be primary to any insurer or coverage provider of the county or the county mental health transportation panel.
- Provide a specialized training program for best practices when working with and transporting an individual with severe mental illness or a person requiring treatment safely and effectively. The program would have to be approved by DHHS and include training on recipient rights.

- Deploy two officers for every transport order that are gender-appropriate for the situation.
- Establish a well-maintained company vehicle fleet equipped for recipient and security transport officer travel and safety.
- Use the level of force authorized for peace officers under the code.¹
- Protect and respect recipient regulations under the federal Health Insurance Portability and Accountability Act (HIPAA) and recipient rights under section 7 of the code. If these provisions were not met, the local CMHSP could investigate and recommend remedial action.
- Provide security transport officers with a defensive driving course.
- Maintain a dispatch service system available at all times to receive transport orders and deploy security transport officers.
- Maintain transport security officer duties, protocols, and procedures.
- Maintain transport service policies and procedures.
- Maintain protocols and procedures for transportation emergencies, recipient safety and transport care, de-escalation techniques, crisis intervention and prevention, and recipient and customer relations.
- Maintain mental health facility policies and procedures in the same manner as required under the code for peace officers.
- Maintain transport vehicle requirements, care, and inspection procedures.
- Maintain roadside emergency procedures and policies, including basic first aid and courses in cardiopulmonary resuscitation.

Transportation by a security transport officer would not constitute an arrest of the individual. A security transport officer would have the authority to maintain custody of an individual taken into protective custody by a peace officer under a court order. However, this authority would only apply when transporting the individual to or from a hospital, a mental health screening unit, or another mental health treatment center under a court order.

Transport by a security transport officer

Currently, only a peace officer is authorized under the code to take certain individuals into protective custody and transport them to an appropriate facility for mental health screening or to a program for treatment under a court order. Under certain circumstances, a court may order an individual to undergo involuntary treatment for a substance use disorder and may also order the individual to be transported by a peace officer to a program for treatment.

The bill would require either a peace officer or a security officer to transport an individual to a program after the individual is taken into protective custody by a peace officer. Currently, the transportation costs are included in the costs of the substance abuse disorder treatment. The bill would also apply this requirement to transport by a security transport officer.

The bill would allow a CMHSP to arrange for a security transport officer to transport an individual from a preadmission screening unit to a hospital. The bill also would amend several provisions requiring a peace officer to transport an individual or a minor from one setting to another for the purpose of screening, examination, or treatment to require, after a peace officer

¹ Section 427a of the code allows a peace officer, when taking an individual into protective custody, to use the kind and degree of force lawful when effecting an arrest for a misdemeanor without a warrant.

takes the individual or minor into protective custody, either the peace officer or a security transport officer to transfer the individual or minor to the appropriate facility or program.

A CMHSP would have to provide the address and telephone number of its preadmission screening unit or units to private security companies under contract with a county.

In transporting an individual, a security transport officer could take reasonable steps for self-protection. The protective steps authorized under the code may include a pat-down search to the extent necessary to discover and seize a dangerous weapon. Protective steps would have to be taken prior to transporting the individual to a preadmission screening unit or a hospital.

Criminal and civil liability

Neither a county nor a county mental health transportation panel would be civilly liable for an act or omission of a security transport officer or a private security company contracted with a county under the bills.

In addition, the bill would apply to a security transport officer the same level of immunity against criminal or civil liability as afforded to a peace officer, member of the emergency service unit, or staff member of an approved service program or emergency medical service acting in the course of their official duties, and security transport officers would have the same immunity as provided to a governmental employee under the governmental immunity act (described below) when acting under the bill's provisions. The bill does not contain a provision extending immunity against civil or criminal liability to a private security company.

Although the bill would eliminate a current provision in the Mental Health Code that excludes a peace officer who engaged in conduct involving gross negligence or willful and wanton misconduct from enjoying immunity from being sued, a similar exclusion from civil liability for an injury to a person or damage to property caused by an employee while in the course of employment or service if certain conditions are met is provided under the state's governmental immunity act.²

Mental Health Transportation Fund

The bill would create the Mental health Transportation Fund in the state treasury. The state treasurer could receive money or other assets from any source for deposit into the fund and would direct fund investments and credit to the fund interest and earnings from those investments. Money in the fund at the close of a fiscal year would not lapse to the general fund. DHHS would be the administrator of the fund for auditing purposes. DHHS could expend money from the fund upon appropriation only to carry out provisions of the new section 170 proposed by the bill, which is described under the first two headings in this summary.

MCL 330.1100d et seq.

² Section 7 of 1964 PA 170 provides that an employee of a governmental agency, among others, is immune from tort liability for an injury to a person or damage to property caused by the employee while in the course of employment or service while acting on behalf of a governmental agency if all of the following are met: the employee is acting or reasonably believes he or she is acting within the scope of his or her authority; the governmental agency is engaged in the exercise or discharge of a governmental function; and the employee's conduct does not amount to gross negligence that is the proximate cause of the injury or damage. "Gross negligence" is defined as conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results.

FISCAL IMPACT:

The bill would have no direct fiscal impact on the state or local units of government. The bill would allow a county to contract with a private security company if the county mental health transportation panel recommends the use of a private security company.

POSITIONS:

The following entities indicated support for the bill:

- Michigan Association of Counties (6-16-22)
- Michigan Municipal League (6-16-22)
- Michigan Sheriffs' Association (6-9-22)

Legislative Analyst: Susan Stutzky
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.