MT Psychiatric Assn

EXHIBIT 4
DATE 2/17/2011
HB 518

PLEASE OPPOSE HB 518
MENTAL HEALTH ADVANCE DIRECTIVES

1. The bill is complex, far-reaching, unwieldy, negating many facets of established law, indifferent to the limited infrastructure of mental health providers available to treat persons with mental illness in Montana, and did not involve KEY stakeholders in its preparation, i.e., psychiatrists, psychiatric advanced nurse practitioners, and district court judges.

2. The design and implementation of Mental Health Advance Directives is in its infancy. Approximately 25 states have them. The efficacy of a Mental Health Advance Directive to enhance continuity of care, decrease reliance on coercive (court) interventions, or decrease hospitalization has not been studied or proven.

3. The promotion of a Mental Health Advance Directive, to the exclusion of an Advance Directive for other medical problems, i.e., heart disease, lung disease, kidney disease, once again separates care of the brain from other organs, and risks further stigmatizing the treatment of the brain as not within the purview of medical treatment. Such exclusion has already had an adverse impact on the funding/insurance reimbursement for mental health treatment.

4. It is well-established that the capacity of persons with mental illness fluctuates. Because persons with mental illness often lack insight into having a mental illness (50% of persons with serious mental illness), the presumption of capacity at the time a person with mental illness drafts a Mental Health Advance Directive is tenuous at best.

5. There are no criteria in HB 518 that would assure a mental health provider that an agent, appointed by a principal, would have the capacity to make important mental health treatment decisions for the principal.

6. The treatment of a person's mental illness changes over time as the symptoms themselves can change, concomitant illnesses may prohibit usual treatment choices, and there may be new, approved therapies for a

person's mental illness. An irrevocable Mental Health Advance Directive would not recognize these important treatment parameters.

7. If a principal has a revocable Mental Health Advance Directive, it is likely that during a period of heightened symptomatology the principal would revoke their Mental Health Advance Directive. During a period of significant decompensation, persons with serious mental illness often decline all appropriate treatment as they do not recognize themselves as being mentally ill.

8. HB 518 would give agents of an incapacitated principal authority over guardians and conservators. There are well-established laws in every state defining the roles of guardians and conservators, and an invalidation of their authority and responsibility would seem ill-advised.

9. HB 518 would restrict judicial authority in civil commitment, guardianship or protective proceeding. Such an intrusion into judicial decision-making, without evidence of benefit, again appears ill-advised.

10. HB 518 is not clear with respect to the authority of a Mental Health Advance Directive in emergency and involuntary situations. As emergency and involuntary situations involve some level of dangerousness, it is imperative that courts and mental health providers not be subject to any constraints that would impede the ability to assure the safety of the principal and those interacting with the principal.

11. The implementation of HB 518 would cause a number of significant logistical problems for the limited number of mental health providers in Montana, and could result in a delay of timely treatment. The logistical problems include: the search for the Mental Health Directive, the search for the agent, the ever-changing capacity of the principal and the unknown capacity of the agent, the elusive interpretation of "standard of care," utilizing the principal-driven criteria to determine loss of capacity, finding two available mental health providers (one of the principal's choice) to determine loss of capacity, and the likely need to invoke judicial intervention at several points along this continuum so as to provide the principal with appropriate treatment and avoid the liability of

not comporting with the Mental Health Advance Directive. All of these are time-consuming procedures and could delay treatment, have a negative impact on the recruitment and retention of mental health providers in Montana, and result in Montana mental health providers declining to treat individuals with cumbersome and inappropriate Mental Health Advance Directives.

12. **HB 518 proposes to allow an agent to admit an incapacitated principal to a hospital of the principal's choosing. There are again complex, well-established, legally sound voluntary and involuntary processes for psychiatric hospitalization that have evolved over several decades. To presume to invalidate these procedures using an informal relationship with an agent would appear to ignore years of effort to carefully balance a principal's rights with respect to psychiatric hospitalization.**

13. **In summary, a person with mental illness should be encouraged to communicate their treatment preferences. However, making such pronouncements legally binding in a Mental Health Advance Directive as proposed by HB 518 ignores capacity issues associated with having a mental illness, as well as the limitations of an already overburdened mental health and judicial system, and has the potential to create more problems than it intends to solve.**

Montana Psychiatric Association
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Legislative Representative