ABOUT THIS COMMENTARY #4

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Southern Iowa MHC, Ottumwa
Richmond Center, Ames
Vera French MHC, Davenport
Berryhill Center for MH, Ft. Dodge
Mideast Iowa MHC, Iowa City
Plains Area MHC, LeMars
North Iowa MHC, Mason City
Abbe Center, Cedar Rapids

Northeast Iowa Behavioral Health, Decorah
EyerlyBall CMHC, Des Moines
Center Associates, Marshalltown
Seasons Center for CMHC, Spencer
West Iowa CMHC, Denison
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Community Health Centers of Southern Iowa, Leon
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HSB 646/SSB 3125, Acts relating to the redesign of publicly funded mental health and disability services.

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   After considerable thought and discussion, the Alliance is convinced that these divisions of responsibilities should become part of the discussion in crafting this legislation.

   We have concluded that, in most cases, the department, rather than the commission, should be delegated the bulk of the regulatory oversight functions contemplated in this legislation. Without reflection on the service of those now on the commission nor on the historical rationale for its origin, the Alliance believes the criteria that determines commission’s membership renders it as no longer appropriate to serve in the significant regulatory role envisioned for it in the Study Bill. A majority of its members have, by those criteria, vested conflicts of interest in those regulatory duties. Its 18 voting members are much better suited to a role of an advisory board than an adjudicatory, certification, regulatory oversight body. These responsibilities are best placed in the department, its director, and the Council of Human Services. This interest in focusing accountability in the department rather than the commission will be noted in several items that follow but these are by no means a comprehensive listing. See, for example, Item #14 below concerning an Allowable Growth Factor recommendation. A Code and Study Bill word search is recommended.

   This ACTION ITEM is to amend, where appropriate, by deleting “commission” and inserting “department.”

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   Page 1, lines 5-12; page 7, lines 16-21 and 33-35; page 8, lines 1 & 2 and 11-14—Several of these cite to a specific (and proprietary) assessment instrument as the preferred methodology for determining an individual’s eligibility for mental health and intellectual disability services. [N.B. No specific instrument is referenced for brain injury services.] These provisions go on to delegate authority to the Mental Health and Developmental Disabilities Commission [the commission] to approve some other standardized functional assessment methodology.

   Selecting the methodology for individuals wanting to access these services is a very important responsibility. Stating a legislative preference is an unnecessary and unwise level of legislative micromanagement best left to those statutorily charged with the prime accountability for the administering this new system. It also denies flexibility to timely change a designated
methodology if circumstances dictate. Naming a preference also creates an uneven playing field for vendors by giving one product bragging rights. Doing so would be equivalent to telling an agency it can buy automobiles but that the governor and the legislature prefer Fords unless, of course, you want to buy something else. This recommendation is made by the Alliance without having any vested interest in one methodology over another.

For the reasons noted in Item #1, we believe this responsibility should be given to the department rather than the commission.

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Page 1, line 35: The director currently approves county management plans. The Study Bill does not give the director this authority regarding regional management plans. However, at Page 5, line 17 there is a provision that specifically assumes the director’s authority to approve these plans. For reasons cited in Item #1 above the commission’s authority to do so should be deleted. ACTION ITEM – Delete the state commission and insert “department director.”

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the diagnosis? It is ambiguous and unnecessary. **ACTION ITEM** – Delete this sentence or re-write the provision.

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Page 9, lines 1-29: **QUESTION and COMMENT** – As a general proposition, we are uncertain how some of these services can be provided within a region without some direct support and collaboration by one or more state agencies. We recognize the need for the qualifier “subject to the availability of funding” but ask the question of when, how, and by whom this availability or lack thereof is to be determined? This is another argument for giving the director oversight and approval of regional budgets and allocations because they will be driven by the department’s determination of the costs associated with each of these core services.

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Page 10, lines 1 & 2: **COMMENT** – The term “evidence base” has come into vogue as a descriptor for an accountability tool intended to prevent use of untried or tested theories of diagnosis and treatment. We caution against its use in this context as being too restrictive. Consideration should be given to “promising practices,” “emerging practices,” or “evidence informed practices,” or other broader professionally recognized standard(s).

13. **Regional Financing Oversight**
Page 12, lines 4-35 and page 13, lines 1-7: Sec. 7 Regional service system financing: **COMMENT** – Neither in Sec. 2, Regional Service system management plan nor in this Sec. 7 (or elsewhere in the bill for that matter) can we find language requiring approval of a region’s annual budget (fiscal plan) other than the regional governance board itself. This is either an unintended oversight or it is elsewhere in current law or the conforming amendments. For example, the Study Bill does not require that it be in the regional management plan that must be approved at the state level. We recommend language be inserted somewhere in this section affirmatively stating that the department must approve each region’s budget and its fiscal assumptions. [Concerning the latter see the word “anticipated” on page 13, line 4.]

14. **Allowable Growth Factor Recommendations**
Page 12, lines 10-35: **COMMENT** – The Alliance believes working toward an Allowable Growth mechanism is worthy of careful consideration if it is intended to bring more predictability to regional budgeting. Regrettably, there seems to be little support in some important quarters for installing such a mechanism if the school aid formula mechanism currently being scrutinized is any predictor of a trend. If it gets serious consideration we are concerned that the membership of the commission has such a vested interest in the level of that growth factor that its recommendations will have little credibility and therefore would be largely a waste of valuable and expensive fiscal analysis resources. The Legislative Services Agency has great experience in doing this kind of analysis. If the governor prefers an executive branch agency, it may be prudent to have the Department of Management do it in the first place as it would have to do the analysis in the end for the governor anyway.
15. Support for Mental health and disability services workforce development workgroup
Page 13, line 17, Sec. 11, COMMENT – We have supported the creation of this workgroup since it was first suggested during the interim workgroup process. The reasons have been stated well and repeatedly. However, we urge that its staff support be adequately funded. This particular workgroup is proposed to have 23+ members with an agenda topic that ranks as one of the most chronically controversial in the public policy making arena. The tasks are extensive and require great technical expertise.

Moral and fiscal support from the most senior levels in the executive and legislative branches must be obvious to all the stakeholders. Timely success in this area is a good economic development strategy with an enormous impact on the well-being of our citizens. Failure in this critical area will stall the momentum generated by the enthusiasm of the initial success in launching this redesign. Make the necessary resources available so this task has an opportunity for success. It is a good short and long term investment.

16. Inclusion of Regional Safety Net Providers on Workgroup
Page 14, lines 13 & 14: Recognizing the value of the numerous public members on this workgroup, it is the health care providers that will be employing the individuals this work group seeks to find, train, and place throughout the state. These providers need to be well represented. The providers we recommend for specific mention are all specifically named in the Study Bill as a mandatory presence in every region. Their value should be recognized by being specially named to this workgroup. They are all “boots on the ground” now and their expertise and incentive for this effort to succeed is invaluable.

ACTION ITEM – Delete sub-paragraph (i). and insert NEW SECTION. (i). A representative of a community mental health center, a representative of a federally qualified health center, a representative of a hospital with an inpatient psychiatric unit, a representative of a state mental health institute, and at least three other providers of mental health and disability services.

17. Outcomes and Performance Measures Committee—Specified Members
Page 15, lines 25-35 and page 16, lines 1-16: As noted in item #15, as safety net providers these specific providers have the biggest stake in seeing that the outcome and performance measures are sound, doable, and aggressive enough to measurably raise the standard of care across the state. These providers have been eager and valued participants in this redesign effort and we can expect that to continue if so recognized. ACTION ITEM – Insert after “services” in line 35 the following “including a representative of a CMHC, a FQHC, an MHI, a hospital with an inpatient psychiatric unit, and other...”

18. Mental health and disability services regions—criteria
Page 19, line 5 et seq.: COMMENT – These concerns are more technical or are questions to enhance our understanding of the intent of some provisions.

a) Page 19, lines 11-13: QUESTION – Does this subsection 2 give the director and the commission authority to waive any of the conditions included in subsection 3, (a)-(g)? Again, we question the wisdom of allowing the commission discretion in approving or disapproving regional composition given its compositional bias.
b) Page 19, lines 20-26: **QUESTION** – If the answer to subsection 2 is negative, is subsection 3(c) the only criteria that can be waived? As the answer would seem obviously “Yes,” then there is no mechanism to waive, for example, the three county minimum.

**COMMENT** – This would seem very problematic for Polk County, for example. Last year’s legislative provisions for waiver were drafted and discussed but apparently have been abandoned.

c) Page 19, line 25: **COMMENT** – The term “convincing evidence” is very problematic. To our understanding this is not a legally recognized standard of proof. There is a “clear and convincing evidence” standard which is well defined in case and statutory law but which would be a high standard indeed for the department director and the commission to overcome to grant a waiver. We recommend seeking a more artful term. Almost assuredly this authority will have to be exercised concerning the very rural parts of the state and the standard used to exercise that authority will likely be the subject of any resulting litigation.

d) Page 19, lines 29-35 and page 20, line 1: **COMMENT** – While this language is virtually identical to that in SF 525, it may need some clarification as the sentence structure could lead to different conclusions over which clauses modify which entity. For example, do any of the criteria following the words “federally qualified health center” apply solely to the FQHCs or do they likewise apply to the CMHCs?

e) Page 20, line 9: **QUESTION** – The referenced “clear lines of accountability” relate to whom and how often?

f) Page 20, lines 10-12: **COMMENT** – This requirement seems vague and the last phrase seems incomplete or at least confusing in its syntax.

g) Page 20, lines 15-35 and Page 21, line 1: **COMMENT** – As we noted in earlier commentaries, this implementation schedule seems overly aggressive and optimistic.

h) Page 21, lines 20-21: **COMMENT** – This sub-section requires the regional transition plan designate a single targeted case manager to be funded by TXIX. This is very problematic for a number of Alliance members in areas currently using multiple TCMs. This issue will be addressed in greater detail in the context of the discussion over case management in general.

19. **Regional governance structure**

**Page 22, line 5, Sec. 18:** **COMMENT** – This section contains some of our greatest concerns about the workability of this regional structure.

a) Page 22, line 14, Allowing more than one member from a county will likely create significant logistical and operational problems in many regions. Most regions are going to contain more than five counties and some could exceed ten. If a county board includes supervisors from both political parties there will be political pressure for both have at least one member on the regional board which means three people because the majority party will want to out vote the minority party to control the county’s one vote. Of course, that assumes each county gets just one vote on the regional board. The point is these boards will be unwieldy and the number of consumer members has yet to be determined. **ACTION ITEM**: Delete “or more”
b) Page 22, lines 19-25, COMMENT – There is no provision designating who decides how many and who these consumer members are to be. It implies it is the supervisor members but that seems uncertain. This sub-section allows “at least” three consumers. Here again, there will be considerable pressure to have at least one per county and more than one type of consumer represented. Quorum issues, scheduling, and mileage expense are but a few of the concerns generated by sheer size of these governance boards. These boards could be larger than any other public policy deliberative body in the state except the Iowa House and Senate.

c) Page 22, lines 15-18: This is the most problematic provision in the entire bill draft. It says supervisors are the only governance board members who can vote on matters “involving the local public funding…” There is no practical way to implement this provision. How will the board decide if a decision involves county funds? What important decisions of vital concern to consumers would not be excluded? Does hiring an administrator fall into this category? Who will decide in the course of a meeting whether a “decision” is presented that limits who can vote on it? This provision will only breed distrust, cause protracted delays in decision making, and in some cases make the proceedings look like a circus run by people who fight all the time. This could hardly be an atmosphere for running a major public entity involving hundreds of thousands, if not millions, of dollars. ACTION ITEM – Delete the last sentence of this subsection.

d) Page 22, lines 33-35: COMMENT – It seems incongruent for the administrator to unilaterally negotiate and execute these contracts apparently without the necessity for approval by the board that hires that entity.

e) Page 23, line 13-16: COMMENT – This sentence seems to be drafted in error because it references the costs of the “regional administrator” and the intent must be to limit the costs of regional administration. However, the substantive objection to this provision is the unrealistic and unquantified use of a 5% limit. This is the same figure included in SF 525 and we have noted the Alliance’s objection to its continued unsubstantiated use ever since, recent committee testimony notwithstanding.

f) Page 23, lines 17-19: QUESTION – What is the purpose or meaning of this section?

20. Notification of Residency Dispute

Page 26, lines 34-35 and page 27, line 1: COMMENT – This period of 120 days to notify the department of a dispute is inordinately long and will likely result in providers waiting for months to be paid. Some mechanism should be worked out to deal with this so the parties and the providers don’t have to wait until the legal dispute between the disputants is resolved. As for the issue of settlement in general, we remain hopeful that the provisions as now written will avoid merely substituting the issue of regional legal settlement for county legal settlement.
For further information or expressions of interest in this document please contact Cindy Kaestner or Patrick Schmidt, Alliance co-chairs, or any member of the Alliance’s advocacy team:

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Page 10, lines 1 & 2: **COMMENT** – The term “evidence base” has come into vogue as a descriptor for an accountability tool intended to prevent use of untried or tested theories of diagnosis and treatment. We caution against its use in this context as being too restrictive. Consideration should be given to “promising practices,” “emerging practices,” or “evidence informed practices,” or other broader professionally recognized standard(s).

13. Regional Financing Oversight
Page 12, lines 4-35 and page 13, lines 1-7: Sec. 7 Regional service system financing: **COMMENT** – Neither in Sec. 2, Regional Service system management plan nor in this Sec. 7 (or elsewhere in the bill for that matter) can we find language requiring approval of a region’s annual budget (fiscal plan) other than the regional governance board itself. This is either an unintended oversight or it is elsewhere in current law or the conforming amendments. For example, the Study Bill does not require that it be in the regional management plan that must be approved at the state level. We recommend language be inserted somewhere in this section affirmatively stating that the department must approve each region’s budget and its fiscal assumptions. [*Concerning the latter see the word “anticipated” on page 13, line 4.*]

14. Allowable Growth Factor Recommendations
Page 12, lines 10-35: **COMMENT** – The Alliance believes working toward an Allowable Growth mechanism is worthy of careful consideration if it is intended to bring more predictability to regional budgeting. Regrettably, there seems to be little support in some important quarters for installing such a mechanism if the school aid formula mechanism currently being scrutinized is any predictor of a trend. If it gets serious consideration we are concerned that the membership of the commission has such a vested interest in the level of that growth factor that its recommendations will have little credibility and therefore would be largely a waste of valuable and expensive fiscal analysis resources. The Legislative Services Agency has great experience in doing this kind of analysis. If the governor prefers an executive branch agency, it may be prudent to have the Department of Management do it in the first place as it would have to do the analysis in the end for the governor anyway.
15. Support for Mental health and disability services workforce development workgroup
Page 13, line 17, Sec. 11, COMMENT – We have supported the creation of this workgroup since it was first suggested during the interim workgroup process. The reasons have been stated well and repeatedly. However, we urge that its staff support be adequately funded. This particular workgroup is proposed to have 23+ members with an agenda topic that ranks as one of the most chronically controversial in the public policy making arena. The tasks are extensive and require great technical expertise.

Moral and fiscal support from the most senior levels in the executive and legislative branches must be obvious to all the stakeholders. Timely success in this area is a good economic development strategy with an enormous impact on the well-being of our citizens. Failure in this critical area will stall the momentum generated by the enthusiasm of the initial success in launching this redesign. Make the necessary resources available so this task has an opportunity for success. It is a good short and long term investment.

16. Inclusion of Regional Safety Net Providers on Workgroup
Page 14, lines 13 & 14: Recognizing the value of the numerous public members on this workgroup, it is the health care providers that will be employing the individuals this work group seeks to find, train, and place throughout the state. These providers need to be well represented. The providers we recommend for specific mention are all specifically named in the Study Bill as a mandatory presence in every region. Their value should be recognized by being specially named to this workgroup. They are all “boots on the ground” now and their expertise and incentive for this effort to succeed is invaluable.

ACTION ITEM – Delete sub-paragraph (i). and insert NEW SECTION. (i). A representative of a community mental health center, a representative of a federally qualified health center, a representative of a hospital with an inpatient psychiatric unit, a representative of a state mental health institute, and at least three other providers of mental health and disability services.

17. Outcomes and Performance Measures Committee—Specified Members
Page 15, lines 25-35 and page 16, lines 1-16: As noted in item #15, as safety net providers these specific providers have the biggest stake in seeing that the outcome and performance measures are sound, doable, and aggressive enough to measurably raise the standard of care across the state. These providers have been eager and valued participants in this redesign effort and we can expect that to continue if so recognized. ACTION ITEM – Insert after “services” in line 35 the following “including a representative of a CMHC, a FQHC, an MHI, a hospital with an inpatient psychiatric unit, and other...”

18. Mental health and disability services regions—criteria
Page 19, line 5 et seq.: COMMENT – These concerns are more technical or are questions to enhance our understanding of the intent of some provisions.

a) Page 19, lines 11-13: QUESTION – Does this subsection 2 give the director and the commission authority to waive any of the conditions included in subsection 3, (a)-(g)? Again, we question the wisdom of allowing the commission discretion in approving or disapproving regional composition given its compositional bias.
b) Page 19, lines 20-26: **QUESTION** – If the answer to subsection 2 is negative, is subsection 3(c) the only criteria that can be waived? As the answer would seem obviously “Yes,” then there is no mechanism to waive, for example, the three county minimum.  

**COMMENT** – This would seem very problematic for Polk County, for example. Last year’s legislative provisions for waiver were drafted and discussed but apparently have been abandoned.

c) Page 19, line 25: **COMMENT** – The term “convincing evidence” is very problematic. To our understanding this is not a legally recognized standard of proof. There is a “clear and convincing evidence” standard which is well defined in case and statutory law but which would be a high standard indeed for the department director and the commission to overcome to grant a waiver. We recommend seeking a more artful term. Almost assuredly this authority will have to be exercised concerning the very rural parts of the state and the standard used to exercise that authority will likely be the subject of any resulting litigation.

d) Page 19, lines 29-35 and page 20, line 1: **COMMENT** – While this language is virtually identical to that in SF 525, it may need some clarification as the sentence structure could lead to different conclusions over which clauses modify which entity. For example, do any of the criteria following the words “federally qualified health center” apply solely to the FQHCs or do they likewise apply to the CMHCs?

e) Page 20, line 9: **QUESTION** – The referenced “clear lines of accountability” relate to whom and how often?

f) Page 20, lines 10-12: **COMMENT** – This requirement seems vague and the last phrase seems incomplete or at least confusing in its syntax.

g) Page 20, lines 15-35 and Page 21, line 1: **COMMENT** – As we noted in earlier commentaries, this implementation schedule seems overly aggressive and optimistic.

h) Page 21, lines 20-21: **COMMENT** – This sub-section requires the regional transition plan designate a single targeted case manager to be funded by TXIX. This is very problematic for a number of Alliance members in areas currently using multiple TCMs. This issue will be addressed in greater detail in the context of the discussion over case management in general.

19. Regional governance structure
Page 22, line 5, Sec. 18: **COMMENT** – This section contains some of our greatest concerns about the workability of this regional structure.

a) Page 22, line 14, Allowing more than one member from a county will likely create significant logistical and operational problems in many regions. Most regions are going to contain more than five counties and some could exceed ten. If a county board includes supervisors from both political parties there will be political pressure for both have at least one member on the regional board which means three people because the majority party will want to out vote the minority party to control the county’s one vote. Of course, that assumes each county gets just one vote on the regional board. The point is these boards will be unwieldy and the number of consumer members has yet to be determined. **ACTION ITEM**: Delete “or more”
b)  Page 22, lines 19-25, **COMMENT** – There is no provision designating who decides how many and who these consumer members are to be. It implies it is the supervisor members but that seems uncertain. This sub-section allows “at least” three consumers. Here again, there will be considerable pressure to have at least one per county and more than one type of consumer represented. Quorum issues, scheduling, and mileage expense are but a few of the concerns generated by sheer size of these governance boards. These boards could be larger than any other public policy deliberative body in the state except the Iowa House and Senate.

c)  Page 22, lines 15-18: This is the most problematic provision in the entire bill draft. It says supervisors are the only governance board members who can vote on matters “involving the local public funding…” There is no practical way to implement this provision. How will the board decide if a decision involves county funds? What important decisions of vital concern to consumers would not be excluded? Does hiring an administrator fall into this category? Who will decide in the course of a meeting whether a “decision” is presented that limits who can vote on it? This provision will only breed distrust, cause protracted delays in decision making, and in some cases make the proceedings look like a circus run by people who fight all the time. This could hardly be an atmosphere for running a major public entity involving hundreds of thousands, if not millions, of dollars. **ACTION ITEM** – Delete the last sentence of this subsection.

d)  Page 22, lines 33-35: **COMMENT** – It seems incongruent for the administrator to unilaterally negotiate and execute these contracts apparently without the necessity for approval by the board that hires that entity.

e)  Page 23, line 13-16: **COMMENT** – This sentence seems to be drafted in error because it references the costs of the “regional administrator” and the intent must be to limit the costs of regional administration. However, the substantive objection to this provision is the unrealistic and unquantified use of a 5% limit. This is the same figure included in SF 525 and we have noted the Alliance’s objection to its continued unsubstantiated use ever since, recent committee testimony notwithstanding.

f)  Page 23, lines 17-19: **QUESTION** – What is the purpose or meaning of this section?

20. Notification of Residency Dispute
Page 26, lines 34-35 and page 27, line 1: **COMMENT** – This period of 120 days to notify the department of a dispute is inordinately long and will likely result in providers waiting for months to be paid. Some mechanism should be worked out to deal with this so the parties and the providers don’t have to wait until the legal dispute between the disputants is resolved. As for the issue of settlement in general, we remain hopeful that the provisions as now written will avoid merely substituting the issue of **regional** legal settlement for **county** legal settlement.
For further information or expressions of interest in this document please contact Cindy Kaestner or Patrick Schmidt, Alliance co-chairs, or any member of the Alliance’s advocacy team:

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