

# Legislative Analysis



## MENTAL HEALTH & SUBSTANCE USE DISORDER INFO: STANDARDIZED RELEASE FORM

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**House Bill 5136 (Substitute H-1)**

**Sponsor: Rep. Matt Lori**

**Committee: Health Policy**

*(Enrolled as PA 129 of 2014)*

### **First Analysis (2-27-14)**

**BRIEF SUMMARY:** The bill would require the Department of Community Health to develop a standard release form by which confidential mental health and substance abuse disorder information could be made available to public and private entities treating an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder.

**FISCAL IMPACT:** House Bill 5136, as reported, may result in an increase in administrative costs for the Department of Community Health, as this agency would be required to develop a standard release form for the exchange of confidential mental health and substance abuse disorder information that is utilized by all public/private agencies, departments, corporations, or individuals involved in the treatment of individuals with serious mental illness and emotional disturbance, developmental disability, or substance use disorder.

### **THE APPARENT PROBLEM:**

According to information available on the Substance Abuse & Mental Health Services Administration website, about 45.1 million adults were reported as having any type of mental illness in the past year. Another 20.8 million were reported to have a substance use disorder; about 42.8 percent (8.9 million) of these had co-occurring mental illness. And 68 percent of adults with a mental disorder also had one or more medical conditions.

The reason these statistics are important, say knowledgeable observers, is because there currently is a lack of coordinated care between providers of behavioral health, physical health, and substance use disorders. Simply put, one provider may not know if a patient is seeing other providers or what treatments, tests, or medications another provider may have ordered. Patients may be getting duplicative services, which contribute to the high cost of health care, or may not be getting adequate care at all. In addition, many adults and children with mental health and/or substance use disorders receive services from public and private agencies, or have encounters with the criminal justice system. Receiving accurate information as to current or past behavioral and/or substance use disorder treatment is said to be instrumental in determining the services, or adjudication, that an individual receives.

However, say critics, the fact that there are so many types of release forms used or accepted by various providers of services to persons with a mental illness and/or

substance use disorder plays a role in making the sharing of information difficult and time consuming.

In its report entitled, "Improving Quality of Life by Supporting Independence and Self-Determination," the state Mental Health and Wellness Commission called for action to standardize processes "and the exchange of confidential information to facilitate expedient and coordinated care across the public service system." Some feel that creating a general release form accepted by those providing behavioral health services is one component of fulfilling that recommendation.

### ***THE CONTENT OF THE BILL:***

House Bill 5136 would add a new section to the Mental Health Code (MCL 330.1141a, proposed) to require the DCH to develop a standard release form on or before January 1, 2015. The form would be for exchanging confidential mental health and substance use disorder information for use by all public and private agencies, departments, corporations, or individuals that are involved with treatment of an individual experiencing serious mental illness, serious emotional disturbance, developmental disability, or substance use disorder.

All of the listed parties would be required to honor and accept the standard release form for the purpose for which it was created. An exception would be provided for a party that is subject to a federal law or regulation that provides more stringent requirements, as defined under 45 CFR 160.202 (HIPAA). The standard release form would have to be available in both electronic and paper form. Any transmission of a standard release form via electronic media would be accepted as an original by the party receiving the form.

Beginning on the bill's effective date, the DCH would have to create a workgroup to implement the bill's requirements. The workgroup would meet periodically, but not less than once a year. In developing the form, the department would have to comply with all federal and state laws relating to the protection of individually identifiable health information and all of the following would have to be considered:

- Existing and potential technologies that could be used to securely transmit a standard release form.
- National standards pertaining to electronic release of confidential information, including protecting a patient's identity and privacy in accordance with the federal Health Insurance Portability and Accountability Act.
- Any prior release forms and methodologies used in the state or developed by federal agencies.

### ***ARGUMENTS:***

#### ***For:***

Stricter confidentiality rules apply to the release of mental health and substance use disorder patient records. One result is that many providers will only use their own release

forms. Thus, even though a patient has given consent for a provider to release medical or behavioral health records, that provider may not comply if the consent had been given on a form different from the one the practice uses. The result is that patients or their representatives may have to make multiple trips to different offices to obtain the forms and signatures necessary to get their information released to whom they want to have it.

For example, a circuit court judge testified in committee that it took an attorney three days of driving between various provider offices to obtain the consent forms necessary to obtain the information needed to document his client's mental health status before the court proceeding could continue.

Such delays in getting important medical information to a provider or a program can have significant negative implications for persons with a mental illness or substance use disorder. Decompensation can happen quickly, medication interactions can cause injuries or death, and a person experiencing destabilization all too often can end up in the criminal justice system.

The bill would address the issues by creating a workgroup of stakeholders to develop a form required to be honored by all public and private entities providing behavioral and substance use disorder services. The committee substitute allows an exemption for providers that may, because of public funding or other contractual requirements, be required to utilize a more stringent release form.

The bill would spur the creation of a universal release form that would be HIPAA compliant. The hope of the legislation is that by enabling the timely sharing of information between providers and also with service agencies, people with behavioral health disorders will be better able to access services, programs, and physical health care leading to comprehensive continuity of care.

***Response:***

Though a significant improvement over the bill as introduced, it still is not clear if the exemption from mandatory use of the standard release form contained in the committee substitute is sufficient to protect providers if their professional license standards or agency accreditation standards require more stringent confidentiality requirements.

***POSITIONS:***

Representatives of the Michigan Health Information Network testified in support of the bill. (2-11-14)

Blue Cross Blue Shield Michigan indicated support for the bill. (2-11-14)

Michigan Psychiatric Society indicated support for the bill. (2-11-14)

Mental Health Association in Michigan indicated support for the bill. (2-11-14)

The Michigan Department of Community Health indicated support for the bill. (2-25-14)

The Michigan Coalition to End Domestic and Sexual Violence supports the legislation in concept; the H-1 substitute goes a long way to address concerns expressed by the organization in testimony before the committee.

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