

Legislative Analysis



MEDIATION IN MENTAL HEALTH DISPUTE RESOLUTION

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House Bill 5043 as referred to second committee
Sponsor: Rep. Hank Vaupel

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

House Bill 5044 as referred to second committee
Sponsor: Rep. LaTanya Garrett

1st Committee: Health Policy
2nd Committee: Ways and Means
Complete to 10-22-19

BRIEF SUMMARY: House Bill 5043 would amend Chapter 1 (Department of Mental Health) and Chapter 7A (Dispute Resolution) of the Mental Health Code to change the definition of *mediation* and to require that it be offered to a mental health recipient or the recipient's individual representative, that the recipient be notified of that right regularly, and that the Department of Health and Human Services (DHHS) provide funding for that service.

The current definition would be replaced with a definition of *mediation* as a confidential process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable resolution. A mediator would not have authoritative decision-making power.

House Bill 5044 would amend the Foster Care and Adoption Services Act to revise a citation that would change under HB 5043.

FISCAL IMPACT: House Bill 5043 would have a minimal overall fiscal impact on the state and local CMHSPs, as some recipients would presumably request mediation instead of requesting another form of dispute resolution. As written, the bill is unclear on how much of the fiscal impact would be borne by DHHS and how much would be borne by the CMHSPs. The bill would require DHHS to contract with one or more mediation organizations, but 1) the bill would not require CMHSPs to use state-contracted mediation organizations and 2) the bill would not require DHHS to fund for a certain amount of mediations (e.g., all, half, quarter).

THE APPARENT PROBLEM:

Currently, the Michigan Mental Health Code does not allow the use of mediation until an investigative report has been completed. Especially when the patient is suffering from a mental health crisis, this timeline can be burdensome. Accordingly, legislation has been introduced to move the mediation up in the process and to require that patients be regularly informed about their right to engage mediation.

THE CONTENT OF THE BILLS:

House Bill 5043 would require that a mental health recipient be offered the opportunity to request mediation to solve a dispute with a community mental health services program (CMHSP) or contracted service provider. The CMHSP or service provider would have to provide notice of the right to request and access mediation at the time services or supports were initiated and at least annually thereafter (and the CMHSP or service provider would have to participate if mediation were requested). Additionally, when the local dispute resolution process, local appeals process, or state Medicaid fair hearing was requested, notification of the right to request mediation would also have to be provided.

A request for mediation would have to be recorded by a mediation organization, and mediation would have to begin within 10 business days of the recording. Mediation would not prevent a recipient from using another available dispute resolution option, including a CMHSP's local dispute resolution process, the local appeals process, the state Medicaid fair hearing, or filing a recipient rights complaint. A mediation organization would have to determine if an alternative dispute resolution process was ongoing and notify the process administrator of the mediation request. The parties could agree to suspend other dispute resolution processes voluntarily, unless prohibited by law.

Mediation would have to be completed within 30 days of the mediation ***recording*** (but could be extended by an additional 30 days if agreed to in writing by the parties).

Recording would mean a file created after a request for mediation has been made by a recipient or his or her individual representative or received by a CMHSP or other service provider under contract with the CMHSP.

Within 10 days of the end of the mediation process, the mediator would have to prepare a legally binding document detailing the terms of the agreement, or a document stating that the dispute could not be resolved, and provide copies of the document to all parties. If the dispute were resolved, the document would have to be signed by authorized representatives of both parties and would be enforceable in any court of competent jurisdiction in Michigan.

Under the bill, a contracted mediation organization would have to provide a report with aggregate data and a summary of outcomes to DHHS every six months or as DHHS considers appropriate, to review and evaluate the effectiveness and efficiency of mediation in resolving disputes related to planning and providing services and supports by the CMHSP and its service providers.

DHHS would have to provide funding and directly contract with one or more mediation organizations experienced in coordinating statewide case intake and mediation service delivery through local community dispute resolution centers.

A mediator would have to be a person trained in effective mediation technique and mediator standard of conduct and knowledgeable in the laws, regulations, and

administrative practices relating to the provision of behavioral health services and supports. The mediator could not be involved in any manner with the dispute or with providing services or supports to the recipient.

Finally, the bill would repeal section 788 of the code, which provides that the parties could agree to mediate a dispute any time after the Office of Recipient Rights completed its investigative report.

MCL 330.1100b and 330.1772; proposed MCL 330.1206; repeal of MCL 330.1788

House Bill 5044 would amend the Foster Care and Adoption Services Act to update the citation for “licensed mental health professional,” as that citation would change under HB 5043. The bill is tie-barred to HB 5043, meaning that it could not take effect unless HB 5043 were also enacted.

MCL 722.954c

BACKGROUND INFORMATION:

The bipartisan House C.A.R.E.S. (Community, Access, Resources, Education and Safety) mental health task force, formed on July 12, 2017, met with stakeholders and the public and toured facilities between July and October 2017 and released its report on January 17, 2018.¹ The report includes recommendations for improving care, developing methods of care, and enhancing care in Michigan’s mental health system.

In its list of opportunities to enhance care, the report recommends adding mediation to simplify dispute resolutions for consumers and families. The report notes the following (page 9):

Currently, the Mental Health Code prevents the use of mediation to resolve disputes involving mental health consumers until after an investigative report is completed. The Mental Health Code should be amended to allow the use of mediation as a first step in dispute resolution.

House Bill 5625 of the 2017-18 legislative session² similarly advanced mediation as a dispute resolution process, but required that recipients of mental health services be offered the opportunity to participate in mediation after filing a rights complaint with the Office of Recipients Rights or a local rights office, rather than waiting until the office completed an investigation and investigative report regarding the complaint. That bill was reported from the House Law and Justice committee and passed by the full House in December of 2018.

¹ <https://house.mi.gov/PDFs/HouseCARESTaskForceReport.pdf>

² House Fiscal Agency analysis of HB 5625: <http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5625-442FAD5B.pdf>

ARGUMENTS:

For:

Proponents argued that the bills would remove a heavy burden from patients receiving mental health care who had a dispute with their provider. Rather than waiting for a dispute resolution process to be resolved, which reportedly can take up to 90 days, before making use of mediation services, the bill would make that service available earlier in the process, thus providing what is hoped to be a quicker and more effective resolution to the dispute.

Against:

There was some concern that the bills were unclear on several key issues. For instance, House Bill 5043 requires that DHHS provide funding and directly contract with one or more mediation organizations that provide the relevant services, and requires that patients be informed of the right to mediation, but does not require that the patients use the organization(s) funded or contracted by DHHS. One wonders if any mediation service would be funded by DHHS, or merely those provided by organizations contracted by the department. Additionally, while a “contracted” mediation organization would be required to report to DHHS every six months, if a patient sought services from a noncontracted organization, would the same reporting rules apply?

POSITIONS:

Representatives of the following organizations testified in support of the bill. (10-10-19)
Mental Health Association
Roundtable Strategies

The following organizations indicated support for the bills
National Association of Social Workers—Michigan (10-10-19)
The ARC Michigan (10-10-19)
Michigan Disability Rights (10-10-19)
Epilepsy Foundation (10-10-19)
Michigan Developmental Disabilities Council (10-10-19)
Michigan chapter of the American Academy of Pediatrics (10-17-19)
Michigan Psychiatric Society (10-17-19)

CMH Association of Michigan indicated support for HB 5043. (10-10-19)

Legislative Analyst: Jenny McInerney
Fiscal Analyst: Kevin Koorstra

■ 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.