

MEDIATION IN MENTAL HEALTH DISPUTE RESOLUTION

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House Bill 5625 as reported from committee
Sponsor: Rep. Fred Durhal III
Committee: Law and Justice
Complete to 12-5-18

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

SUMMARY:

House Bill 5625 would require that a recipient of public 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 after the office completes an investigation and investigative report regarding the complaint.

Currently, a recipient of public mental health services, or another individual on behalf of a recipient, may file a rights complaint alleging a violation of the Mental Health Code or departmental rules. If an investigation is conducted, an investigative report of the findings and recommendations to resolve the complaint or dispute must be completed. After the office completes the investigative report, the parties involved may agree to mediate the dispute. The recipient may also utilize the appeals process to resolve the dispute.

The bill would amend Chapter 7A (Dispute Resolution) of the Mental Health Code to require that a person making a complaint be offered the opportunity to mediate the dispute. The offer of mediation would have to be made after the recipient of or applicant for public mental health services, or another individual on behalf of a recipient or applicant, files a rights complaint with the state Office of Recipient Rights or a local rights office. The subject of the complaint would be required to participate in mediation if mediation were selected. The bill would not affect the ability to file an appeal.

The bill would delete the provision that currently restricts mediation until after the office completes the investigative report. In addition, the bill would clarify that, when the parties engage in mediation, all appeal and response times required under *federal law*, and not just under Chapter 7A of the Code, would be suspended during the period of time the mediation is taking place.

The bill would take effect 90 days after enactment.

MCL 330.1788

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.

The bill would not usurp the appeals process currently in place for recipients of mental health services who dispute the findings of an investigation or a departmental decision. Under the bill, a recipient could pursue the current process for dispute resolution, request mediation, or do both.

FISCAL IMPACT:

House Bill 5625 would have a minimal fiscal impact on the state and local community mental health services programs (CMHSPs).

POSITIONS:

Representatives of the following entities testified in support of the bill (11-27-18):

- Mental Health Association in Michigan
- Roundtable Strategies

The following entities indicated support for the bill (11-27-18):

- Department of Health and Human Services
- Michigan Psychiatric Society
- The Arc Michigan
- Michigan Protection and Advocacy

Legislative Analyst: Susan Stutzky
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.

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