

Legislative Analysis



MENTAL HEALTH TREATMENT

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5818 as reported from committee w/o amendment
Sponsor: Rep. Vanessa Guerra

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

House Bills 5819 and 5820 as reported from committee w/o amendment
Sponsor: Rep. Klint Kesto

Committee: Health Policy
Complete to 5-29-18

SUMMARY:

House Bill 5818 would amend Section 5314 of the Estates and Protected Individuals Code (EPIC), which lists the powers and duties of a guardian over a legally incapacitated individual.

Currently, a guardian has the power to give consent and approval necessary for the *ward* (person for whom a guardian is appointed) to receive medical or other professional care, counsel, treatment, or service. The bill would add mental health to that provision, but would state that a guardian does not have and may not exercise the power to consent to or approve inpatient hospitalization unless the court expressly grants the power in its order. If the ward objected to or actively refused mental health treatment, the guardian or any other interested person would have to follow the procedures in Chapter 4 of the Mental Health Code to petition the court for an order to provide *involuntary mental health treatment*.

Involuntary mental health treatment means court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment. (The definition would be amended by HB 5819 to state that it would not include a full or limited guardian authorized under EPIC with the authority to consent to mental health treatment for an individual found to be a legally incapacitated individual under EPIC).

Additionally, a guardian currently has the duty to report the condition of the ward and ward's estate to the court at least annually. The bill would provide that, in addition to information on the ward's current condition, improvement or deterioration, and living arrangements, among other factors, the guardian would need to include mental health treatment received by the ward in the currently required medical treatment information.

MCL 700.5314

House Bill 5819 would amend various sections of the Mental Health Code concerning treatment and consent.

Currently, *assisted outpatient treatment (AOT)* includes the categories of outpatient services ordered by the court under Sections 468 and 469a of the Code. The bill would provide that, if AOT includes case management to provide care coordination, it must be under the supervision of a psychiatrist and developed in accordance with person-centered planning under Section 712 of the Code. (Section 712 requires that person-centered planning must be used to develop an

individual plan of services to address the recipient's need for food, shelter, clothing, health care, employment and educational opportunities, legal services, transportation, and recreation, as desired by the recipient.)

The bill would also amend the definition for *consent* to include a written agreement executed by a full or limited guardian authorized under EPIC, in addition to a recipient, minor recipient's parent, or recipient's legal representative with authority to execute a consent.

Currently, in order to be hospitalized as a voluntary patient, a person or his or her full or limited guardian or patient advocate may execute an application for hospitalization. The bill would allow a written consent for mental health treatment instead, and extend the provision to other treatment as well as hospitalization.

Under current statute, the application must state simply and in large type certain rights afforded to the patient under Sections 419 and 420 of the Code, including the right to terminate hospitalization. Those rights must be orally communicated to the patient when hospitalization begins. If a patient chooses to terminate hospitalization, he or she may not continue to be hospitalized for more than three days after notifying the hospital (excluding weekends), unless the hospital determines that the person should remain and files a petition with the court.

The bill would replace the application with a written consent, which need not state the rights afforded to the patient; however, those rights, including the right to object to the mental health treatment, would still need to be told to the patient upon commencement of mental health treatment. The bill would also extend the ability to notify of intent to terminate treatment to the full or limited guardian and patient advocate authorized under EPIC.

The bill would retain the patient's ability to terminate hospitalization within three days of giving notice (and extend it to mental health treatment), and extend the hospital's ability to petition the court if it determines that the person should continue to receive treatment to apply to a provider of mental health treatment.

MCL 330.1100a et al.

House Bill 5820 would amend several sections of the Mental Health Code to account for court-ordered appropriate outpatient treatment as an alternative to court-ordered admission.

Instead of requiring that the Michigan Supreme Court approve forms used under the Code's Chapter 5 (Civil Admission and Discharge Procedures: Developmental Disabilities), the bill would provide that the State Court Administrative Office (SCAO) prescribe the forms at the direction of the Supreme Court.

The bill would rename the division of Chapter 5 that currently concerns Judicial Admissions to apply to Intellectual Disability Treatment instead. It would substitute the word "treatment" for "judicial admission" throughout the division.

Currently, a court may order admission for a person who has been diagnosed with an intellectual disability and who can reasonably be expected to seriously or physically injure himself or herself or another person, and whose actions have supported that expectation. The bill would retain that ability, but would allow the court to order appropriate outpatient treatment

as an alternative to admission in an appropriate treatment facility. Also, it would allow the court to order admission or treatment if the individual had been arrested and charged with an offense that was a result of the intellectual disability.

If the court ordered admission or treatment for that reason, the director of a facility would be required to notify the prosecuting attorney when the resident is discharged from the facility. (Currently, the director must notify only the court and the community mental health service program if a resident admitted by court order is discharged.)

It would also introduce definitions for the following:

Alternative program of care and treatment means an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.

Treatment means admission into an appropriate treatment facility or an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that is developed in accordance with person-centered planning under Section 712 of the Code.

MCL 330.1500 et al.

House Bills 5818 and 5819 are tie-barred together, which means that neither could take effect unless both were enacted. Each of the three bills would take effect 90 days after its enactment.

FISCAL IMPACT:

House Bills 5818, 5819, and 5820 would not have a fiscal impact on the state or local units of government.

POSITIONS:

A representative of the State Court Administrative Office testified in support of the bills. (5-16-18)

The Mental Health Association indicated support for the bills. (5-2-18)

The Michigan Protection and Advocacy Service indicated support for the bills. (5-2-18)

The Lieutenant Governor's office indicated support for the bills. (5-2-18)

The Michigan Probate Judges Association indicated support for the bills. (5-16-18)

The Prosecuting Attorneys Association of Michigan indicated support for HB 5820. (5-16-18)

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■ 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.