

# Legislative Analysis



## MENTAL HEALTH TREATMENT

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**House Bill 5818 as enacted**  
**Public Act 594 of 2018**  
**Sponsor: Rep. Vanessa Guerra**

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

**House Bills 5819 and 5820 as enacted**  
**Public Acts 595 and 596 of 2018**  
**Sponsor: Rep. Klint Kesto**

**House Committee: Health Policy**  
**Senate Committee: Health Policy**  
**Complete to 2-12-19**

**BRIEF 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. House Bills 5819 and 5820 would amend various sections of the Mental Health Code concerning treatment and consent and to account for court-ordered appropriate outpatient treatment as an alternative to court-ordered admission.

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

### **THE CONTENT OF THE BILLS:**

**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 could not exercise the power to consent to or approve inpatient hospitalization unless the court expressly granted 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* would mean court-ordered hospitalization, assisted outpatient treatment, or combined hospitalization and assisted outpatient 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.

Finally, the bill would allow a guardian to execute, reaffirm, and revoke a nonopioid directive on behalf of a ward, and require the guardian to report on such actions to the court. Nonopioid directives, incorporated into Michigan statute in Public Acts 554 and 555 of 2018 (House Bills 5152 and 5153),<sup>1</sup> could be executed and included in a patient's medical records and would allow patients to opt out of being administered or prescribed an opioid.

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 included case management to provide care coordination, it would have to 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.

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<sup>1</sup> House Fiscal Agency analysis of PAs 554 & 555/HBs 5152 & 5153:  
<http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5152-5657E7CE.pdf>

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.

The bills take effect March 28, 2019.

**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.<sup>2</sup> 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 eased early intervention in the mental health system. The report notes the following:

Michigan’s AOT law, “Kevin’s Law,” has been in existence since 2005. While the Legislature recently expanded the use of AOT, additional changes are necessary to simplify the AOT court process and to promote greater use of outpatient treatment...We should also revise current law to allow guardians to consent to mental health treatment, which will allow for early intervention and outpatient treatment before a serious mental health crisis occurs.

The bill sponsors noted this recommendation as the impetus for the bills.

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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.

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<sup>2</sup> <https://house.mi.gov/PDFs/HouseCARESTaskForceReport.pdf>