



Senate Fiscal Agency  
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## BILL ANALYSIS



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House Bills 5818 through 5820 (as passed by the House)  
Sponsor: Representative Vanessa Guerra (H.B. 5818)  
Representative Klint Kesto (H.B. 5819 & 5820)  
House Committee: Health Policy  
Senate Committee: Health Policy

Date Completed: 12-11-18

**CONTENT**

**House Bill 5818** would amend the Estates and Protected Individuals Code to do the following:

- Allow the guardian of an incapacitated individual to give consent or approval for a ward to receive mental health treatment.
- Prohibit a guardian from providing consent to or approval for inpatient hospitalization without a court order expressly granting the power.
- Prescribe the procedure a guardian would have to follow if a ward refused mental health treatment.
- Require a guardian to report any mental health treatment received by a ward.

**House Bill 5819** would amend the Mental Health Code to do the following:

- Require that a patient's right to object to be treatment be orally communicated to the patient and the person who executed an application.
- Refer to written consent to mental health treatment or written consent with a mental health facility, instead of application.
- Refer to mental health treatment, instead of hospitalization.
- Revise certain definitions

**House Bill 5820** would amend the Mental Health Code to do the following:

- Refer to "treatment", instead of "judicial admission", and provide the definition of "treatment".
- Revise the criteria under which a court could order appropriate outpatient treatment or admission into an appropriate treatment facility.
- Require a facility to notify the prosecuting attorney if an individual with an intellectual disability who was admitted to a facility by court order because of previous arrest and charge related to the disability were discharged.

House Bills 5818 and 5819 are tie-barred. Each bill would take effect 90 days after it enactment.

## **House Bill 5818**

### **Receiving Mental Health Treatment**

Under the Estates and Protected Individuals Code, the guardian of an incapacitated individual has certain powers and duties, to the extent granted by a court order, including the power to give consent or approval that is necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service.

The bill also would allow a guardian to give consent or approval for a ward to receive mental health treatment. However, a guardian would not have and could not exercise the power to give consent to or approval for inpatient hospitalization unless the court expressly granted the power in its order. If a ward objected or actively refused mental health treatment, the guardian would have to follow the procedure provided in Chapter 4 (Civil Admission and Discharge Procedures) of the Mental Health Code to petition the court for an order to provide involuntary mental health treatment.

The bill would define "involuntary mental health treatment" as that term is defined in Section 400 the Mental Health Code: court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment.

### **Reporting Mental Health Treatment**

Under the Code, if a conservator for a ward's estate is not appointed, a guardian must report the condition of the ward and the ward's estate, as required by the court, at least than annually. A report must include certain information, including medical treatment received by the ward

Under the bill, medical treatment would include any mental health treatment.

## **House Bill 5819**

### **Assisted Outpatient Treatment**

Under the Mental Health Code, "assisted outpatient treatment" includes, among other things, case management services to provide care coordination. The bill would require case management services to under the supervision of a psychiatrist and developed in accordance with person-centered planning under Section 712 of the Code. (That Section requires the following:

- A preliminary plan be developed within seven days of the commencement of services or, if an individual is hospitalized for less than seven days, before discharge or release.
- The individual plan of services must consist of a treatment plan, a support plan, or both.
- A treatment plan must establish meaningful and measurable goals with the recipient, and must address the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation.
- The plan must be kept current and must be modified when indicated.
- If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan, which must be completed within 30 days and carried out in a manner approved by the appropriate governing body.

-- An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process.

Justification for an individual's exclusion must be documented in the case record.)

### Consent

The Code defines "consent" as a written agreement executed by a recipient, a minor recipient's parent, or a recipient's legal representative with authority to execute a consent, or a verbal agreement that is witnessed and documented by an individual other than the individual providing treatment.

The bill would include in the definition a written agreement executed by full or limited guardian authorized under the Estates and Protected Individuals Code, with the authority to consent.

### Involuntary Mental Health Treatment

The Code defines "involuntary mental health treatment" as court-ordered hospitalization, alternative treatment, or combined hospitalization and alternative treatment petitioned for as described in Section 468.

Under the bill, for the purpose of Chapter 5 of the Code, the term would not include a full or limited guardian authorized pursuant to the Estates and Protected Individuals Code, with the authority to consent for an individual found to be legally incapacitated under the Estates and Protected Individuals Code.

### Formal Voluntary Patient

Under the Code, an individual 18 years of age or over may be hospitalized as a formal voluntary patient if he or she executes an application for hospitalization, or a full or limited guardian, with authority to admit, or a patient advocate executes an application for hospitalization and if the hospital director considers the individual suitable for hospitalization.

Under the Code, a formal application for hospitalization for a formal voluntary patient must contain in large type and simple language information regarding the termination of treatment. Upon hospitalization, the rights set forth in the application must be orally communicated to the patient and to the individual who executed the application upon hospitalization. The application must be provided to the patient and individual who executed the application, and to one other individual designated by the patient.

Under the bill, the rights that a patient had during the treatment, including the right to object to treatment would have to be orally communicated to the patient and the person who executed the application.

Instead of "application" the bill would refer to written consent with a mental health facility or written consent to mental health treatment. The bill also would refer to mental health treatment, instead of hospitalization.

### Termination of Treatment

The Code provides that a formal voluntary patient 18 years of age or over must not be hospitalized more than three days, excluding Sundays and holidays, after the patient gives

written notice of the intention to terminate the hospitalization. When a hospital is told of an intention to terminate hospitalization, it provide the patient with the written form required under the Code.

After receiving a notice of termination, if it is determined by the hospital director that the patient is a person requiring treatment and should remain in the hospital, the director must file a petition with the court within three days of the notice of termination, accompanied by one clinical certificate executed by a psychiatrist and one clinical certificate executed by either a physician or a licensed psychologist. Treatment may continue pending hearings.

Instead of hospitalization, the bill would refer to mental health treatment. Also, the bill would refer to director *or mental health treatment provider*.

### **House Bill 5820**

#### **Intellectual Disability Treatment**

The Mental Health Code allows a court to order the admission of an individual 18 years of age or older who meets both of the following:

- Has been diagnosed as an individual with an intellectual disability.
- Can reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another person, and has overtly acted in a manner substantially supportive of that expectation.

Under the bill, a court could order appropriate outpatient treatment or admission into an appropriate treatment facility of an individual 18 years of age or older if he or she had been diagnosed with an intellectual disability, and *either* of the following applied:

- He or she could reasonably be expected within the near future to intentionally or unintentionally seriously physically injure himself, herself, or another person, and has overtly acted in a manner substantially supportive of that expectation.
- He or she had been arrested and charged with an offense that was a result of the intellectual disability.

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

#### **Notification of Prosecuting Attorney upon Discharge**

Under the Code, the director of a facility may, at any time, discharge an administratively-admitted resident or a resident admitted by court order, and must discharge a resident admitted by court order when he or she no longer meets the criteria for judicial admission.

If a resident discharged as described above has been admitted to a facility by court order, or if court proceedings are pending, both the court and the community mental health service program must be notified of the discharge by the facility.

Under the bill, if a resident met the criteria for treatment he or she had been arrested and charged with an offense that was a result of the intellectual disability, the prosecuting attorney also would have to be notified of the discharge by the facility.

## Other Provisions

The Code requires the Department of Health and Human Services to prescribe the forms to be used under Chapter 5 (Civil Admission and Discharge Procedures: Developmental Disabilities) of the Code, and all facilities must use Department forms.

Forms that may be used in court proceedings under Chapter 5 are subject to approval by the Michigan Supreme Court (MSC). The bill would delete this provision. Instead, under the bill, at the direction of the MSC, the State Court Administrative Office would have to prescribe the forms used for court proceedings under Chapter 5.

Under the bill, "alternative program of care and treatment" would mean an outpatient program of care and treatment suitable to the individual's needs under the supervision of a psychiatrist that was developed in accordance with person-centered planning under Section 712.

MCL 700.5314 (H.B. 5818)  
330.1100a et al. (H.B. 5819)  
330.1500 et al. (H.B. 5820)

Legislative Analyst: Tyler VanHuyse

## **FISCAL IMPACT**

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Ellyn Ackerman

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.