

PERMISSIBLE SHARING OF CONFIDENTIAL MENTAL HEALTH INFORMATION

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House Bill 5782 (reported from committee w/o amendment)

Sponsor: Rep. Mike Callton, D.C.

Committee: Health Policy

(Public Act 559 of 2016)

Complete to 10-26-16

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

BRIEF SUMMARY: House Bill 5782 would amend the Mental Health Code to allow otherwise confidential mental health information to be shared as necessary for the treatment, coordination of care, payment, or delivery of mental health services.

FISCAL IMPACT: House Bill 5782 could increase administrative costs for both the Department of Health and Human Services and local community mental health services programs by a negligible to minimal amount due to potential increases in requests for mental health information recorded within the department or local programs for the purposes of coordinating treatment, care, payments, or other services.

THE CONTENT OF THE BILL:

Current Law

Section 748 of the Mental Health Code states that patient records are confidential and not open to public inspection, with certain exceptions. An adult patient who does not have a guardian and has not been judged legally incompetent must be given the record upon request within 30 days of the request or the patient's release from treatment. Additionally, the information must also be disclosed if necessary to fulfill legal requirements or to a deceased patient's next of kin for purposes of applying for and receiving benefits.

With the consent of the patient or the patient's representative, the information may be disclosed to the patient or representative or to a provider of mental health services, unless the holder of the information indicates in writing that the information would be detrimental to the patient or others.

Currently, the holder of the information may also disclose the information under the following circumstances:

- As necessary in order for the recipient to apply for or receive benefits;
- As necessary for the purpose of outside research (with the patient unidentified, if possible); and
- To the provider of mental or other health services or a public agency, if there is a compelling need for disclosure based upon a substantial probability of harm to the recipient or other individuals.

Proposed Addition

House Bill 5782 would add a fourth instance under which the holder of the information may disclose it: *as necessary for treatment, coordination of care, payment, or other*

related services for the delivery of mental health services, in accordance with the (federal) Health Insurance Portability and Accountability Act of 1996.

As before, information may also be released as required under federal law, and as needed in order to determine whether child abuse or child neglect has occurred.

MCL 330.1748

BACKGROUND INFORMATION:

This expansion of the Mental Health Code was initially suggested by the 2013 report from the Michigan Mental Health and Wellness Commission. In that report, the bipartisan commission recommended that the state:

Update the Michigan Mental Health Code to match the federal Health Insurance Portability and Accountability Act and Family Educational Rights and Privacy Act to allow medical information sharing "in case of an emergency or in the best interests of the patient." Making this statutory change would give a family member or primary caretaker access to medical information of a person with mental illness who may be over the age of 18, in case of an emergency. This would allow for more timely access to mental health services when a person is in a crisis situation.

That report can be found at the following address:

<http://michfed.org/sites/default/files/MHWCommissionReportFinal2014.pdf>

ARGUMENTS:

For:

According to proponents, this bill would ensure that clinicians have all information about the medications a patient has been prescribed before prescribing further medications. In order to ensure that the patient receives the best treatment, the physician must be able to obtain complete medical records, whether those records concern mental or physical health.

Against:

Opponents of this bill argue that mental health information demands and is accorded more protection than that of other medical records because of the stigma associated with mental illness. Under the Health Insurance Portability and Accountability Act (HIPAA), mental health information is generally given the same protections as other health protection, with special protections for psychotherapy notes. Currently, Michigan law "preempts" the federal law by imposes stricter limitations than are present in HIPAA. In other words, a Michigan patient currently must consent to disclosure of medical records except (1) when necessary for the patient to apply for or receive benefits (2) for the purposes of research, with the patient unidentified, if possible, or (3) to avoid harm to the patient and others.

By allowing the holder of the information to disclose the patient's mental health information "as necessary for treatment, coordination of care, payment, or other related

services for the delivery of mental health services, in accordance with the Health Insurance Portability and Accountability Act of 1996[,]" the bill would reduce Michigan's protection of mental health information to that indicated at the federal level. Opponents argue that the current enhanced protection is necessary and proper, and that such sensitive information should not be disclosed, effectively at the holder's discretion, for purposes of expediency.

POSITIONS:

A representative of the Behavioral Health and Developmental Disabilities section of the Michigan Department of Health and Human Services Department testified in support of the bill. (9-13-16)

A representative of Team Mental Health testified in support of the bill. (9-13-16)

The Michigan Association of Health Plans supports the bill. (9-13-16)

The Michigan Academy of Family Physicians supports the bill. (9-13-16)

The Michigan Primary Care Association supports the bill. (9-13-16)

The Mental Health Association of Michigan supports the bill. (9-13-16)

The Michigan Protection and Advocacy Service opposes the bill. (9-20-16)

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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.