



**Mental Health Association
in Michigan**

LETTER FROM LANSING

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Questionable Bill Package Opposed by MHAM Fails in Lame-Duck Legislative Session

Senate Bills 1245-47, allowing law enforcement to access information about people who have been legally prescribed controlled substances for medical conditions, did not make their way through the Legislature after we testified against them.

The package was introduced November 29. Less than a week later a hearing was held by the Senate Michigan Competitiveness Committee. We testified against the bills. The Committee reported them, while telling us to keep an eye on the package to see if important points were being missed. The Senate voted for adoption Dec. 6. A few amendments, partly helpful, were added. But there were still important points being missed. So we testified at the House Health Policy Committee Dec. 12th. We informed the Committee that the Senate bills violated the Code of Federal Regulations (Title 42, Part 2), and lacked appropriate confidentiality protections for law enforcement to request and receive personal identifying information, including diagnosis, on individuals who have legally been prescribed controlled substances. We suggested further amendments, including one that would limit the circumstances under which law enforcement could request and receive your name, health condition, and the drugs you've been prescribed. While we received some support in the Committee vote, the bills were reported without amendment to the full House floor.

We are pleased to report the full House did not adopt the bills, and the 2017-18 legislative session is now closed. We are willing to work on this issue with any interested parties next session, to assure privacy is appropriately handled. Violating confidentiality won't stop bad prescribing, provider fraud, or organized crime. All it will do is set you up to be investigated without any probable cause.

MDHHS Kills Bill That Everyone in Mental Health Advocacy Community Wanted

The state DHHS has killed a bill on mediation of consumer/family complaints that was slated to go through lame-duck. The bill (HB 5625) emanated from the House CARES (mental health) Task Force, and sailed through the House by a vote of 109-0 early this month. (It was not introduced in lame-duck, but rather months ago.) No one testified against it, and MDHHS supported it, thanks to the good efforts of Matt Lori, the department's director of policy and legislative services. Then, because of the critique of a new and inexperienced departmental bureau head, George Mellos, MDHHS switched to neutrality on Dec. 11, and then switched again to opposition Dec. 14. (Dr. Mellos recently replaced Lynda Zeller, whose resignation took effect in September, at the Behavioral Health & Developmental Disability Bureau.) The Senate could have had both us and the department speak to this at a committee hearing Dec. 18th, but chose not to do so.

Most parties recognize that in Michigan the phrase "recipient rights" is largely an oxymoron. Consumers and families rarely get relief from the recipient rights system. And the mediation option presently in law

is a joke. It can only be tried after a recipient rights investigation has been completed (up to 90 days, plus several possible appeals), and then only if the complainant and respondent both agree. That never happens.

Under HB 5625, mediation would be an option (up to the complainant) immediately after the filing of a rights complaint. If opted for by the complainant, the respondent would have to participate in the mediation. The process would be non-binding, and if no agreement were reached, the complainant would retain all of his/her grievance-and-appeal rights.

What did Dr. Mellos and the state Recipient Rights Office (within his bureau) find fault with?

*They said Michigan law requires a complaint involving possible abuse/neglect (classified as 27% of rights allegations in 2017) to be immediately investigated by rights officers. What exactly does that mean? Does every allegation of abuse/neglect automatically have to be investigated? Or do only allegations deemed credible by recipient rights staff have to be investigated immediately? The state's Mental Health Code, administrative rules, and the CMH-MDHHS contract don't answer these questions. Our response is, Why shouldn't the decision on possible initial mediation be up to consumers and families? Who are we to tell them you can't have this option even if you want it? Is the system for consumers and families or other parties? This objection to HB 5625 could be easily rectified, if it even needs fixing.

*They said this would cost the few remaining state hospitals too much money. Yet the House Fiscal Agency said in its analysis that the cost would be "minimal." And Michigan's CMHSPs, which deal with way more clients and way more rights complaints than the state hospitals, did not oppose the bill.

*They said that an abuse/neglect claim can't go to mediation because, without a recipient rights investigation, there can be no determination of whether abuse/neglect occurred, and without that determination, an employee could never be disciplined. This assertion strikes us as very questionable. To say that a rights investigation is the only way to figure out whether discipline is warranted ignores other administrative remedies. And to say that mediation could never uncover whether abuse/neglect occurred shows limited understanding of what the process is capable of. Further, of reported "remedial actions" taken for substantiated abuse/neglect allegations in 2017, less than half resulted in employee discipline. In fact, if one removes "staff left before possible discipline might have been taken" (165 instances) and verbal/written counseling of staff (188 instances), less than 30% of "remedial actions" resulted in significant discipline. One of the most common "remedial actions" (19% of all instances) was simply "training" of staff, which few would characterize as "discipline." So we think the concern for employee discipline isn't reflected in the way things are handled now.

We will be back next legislative session with this bill, and we hope the department under the new Whitmer administration will want to do the right thing.

More Changes to Kevin's Law

The Legislature just put through more revisions to Assisted Outpatient Treatment (AOT) law. We'll report on these next issue.

Lame-Duck Supplemental Appropriations

We will also report on these next issue, once we know if there has been gubernatorial sign-off. Among many items, there is a \$30 million appropriation for a School Mental Health & Support Services Fund.

Wishing You the Best This Holiday Season

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