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House Bills 5043 and 5044 (as passed by the House)
Sponsor: Representative Hank Vaupel (H.B. 5043)
Representative LaTanya Garrett (H.B. 5044)
House Committee: Health Policy
Ways and Means
Senate Committee: Health Policy and Human Services

Date Completed: 1-23-20

CONTENT

House Bill 5043 would amend the Mental Health Code to do the following:

- **Require a recipient or his or her individual representative to be offered an opportunity to request mediation to resolve a dispute between the recipient and a community mental health service program or other provider under contract with the program related to certain services or supports to the recipient.**
- **Require a community mental health services program or service provider to notify to a recipient of the rights to request and access mediation at the time services or supports were initiated and at least annually thereafter.**
- **Require the Department of Health and Human Services (DHHS) to provide funding and directly contract with one or more mediation organizations to fulfill the bill's provisions.**
- **Specify that a mediator would have to be an individual trained in effective mediation technique and mediator standards of conduct.**
- **Require a mediation to begin within 10 business days after a recording, and be completed within 30 days after the recording, unless extended by both parties.**
- **Require a mediator to prepare certain documents depending on the outcome of the mediation process.**
- **Require a contracted mediation organization to provide a report with aggregate data and a summary of outcomes to the DHHS.**

The bill also would repeal Section 788 of the Mental Health Code, which allows parties to agree to mediation of a dispute involving a violation of the Code anytime after the Office of Recipient Rights completes an investigative report.

House Bill 5044 would amend the Foster Care and Adoption Services Act to change citations to the Michigan Compiled Law sections that House Bill 5043 would amend.

House Bill 5044 is tie-barred to House Bill 5043.

House Bill 5043 is discussed in greater detail below.

House Bill 5043

Mediation; Requesting and Participating Parties

Under the bill, a recipient or his or her individual representative would have to be offered an opportunity to request mediation to resolve a dispute between the recipient or his or her individual representative and the community mental health service program or other service provider under contract with the community mental health services program related to planning and providing services or supports to the recipient.

("Recipient" means an individual who receives mental health services from the DHHS, a community mental health services program, or a facility or from a provider that is under contract with the DHHS or a community mental health services program.)

The bill would define "individual representative" as a recipient's legal guardian, minor recipient's parent, or other person authorized by law to represent the recipient in decision making related to the recipient's services and supports.

Under the Code, "mediation" means a private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authorization decision-making power. Under the bill, the term would mean a confidential process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable resolution. A mediator would not have authoritative decision-making power.

The community mental health services program or service provider would have to notify a recipient, or his or her individual representative, of the right to request and access mediation at the time services or supports were initiated and at least annually after that. When the community mental health services program's or service provider's local dispute resolution process, local appeals process, or State Medicaid fair hearing was requested, notification of the right to request mediation also would have to be provided to the recipient or his or her individual representative. If mediation were requested, the community mental health services program or service provider involved in the dispute would have to participate in mediation.

The Department would have to provide funding and would have to directly contract with one or more mediation organizations experienced in coordinating statewide case intake and mediation service delivery through local community dispute resolution centers.

Process and Timeline

A mediator would have to be an individual trained in effective mediation technique and mediator standard of conduct. A mediator would have to be knowledgeable in the laws, regulations, and administrative practices relating to providing behavioral health services and supports. The mediator could not be involved in any manner with the dispute or with providing services or supports to the recipient.

A request for mediation would have to be recorded by a mediation organization, and mediation would have to begin within 10 business days after the recording.

"Recording" would mean a file that had been created after a request for mediation had been made by a recipient or his or her individual representative or received by a community mental health services program or other service provider under contract with the community mental health services program.

Mediation would not prevent a recipient or his or her individual representative from using another available dispute resolution option, the community mental health services program's local dispute resolution process, the local appeals process, the State Medicaid fair hearing, or filing a recipient rights complaint. A mediation organization would have to ascertain if an alternative dispute resolution process were ongoing and notify the process administrator of the request for mediation. The parties could agree to suspend other dispute resolution processes, unless prohibited by law.

Mediation would have to be completed within 30 days after the date it was recorded unless the parties agreed to extend the mediation period for up to an additional 30 days. The mediation process could not exceed 60 days.

Resolution

If the dispute were resolved through the mediation process, the mediator would have to prepare a legally binding document that included the terms of the agreement. The document would have to be signed by the recipient or individual representative and a party with the authority to bind the service provider according to the terms of the agreement. The mediator would have to provide a copy of the signed document to all parties within 10 business days after the end of the mediation process. The signed document would have to be enforceable in any court of competent jurisdiction in the State.

If the dispute were not resolved through the mediation process, the mediator would have to prepare a document that indicated the dispute could not be resolved. The mediator would have to provide a copy of the document to all parties within 10 days after the end of the mediation process.

A contracted mediation organization would have to provide a report with aggregate data and a summary of outcomes to the DHHS every six months, or as the DHHS considered appropriate, to review and evaluate the effectiveness and efficiency of mediation in resolving disputes relating to planning and providing services and supports by the community mental health service program and its service providers.

MCL 330.1100b et al. (H.B. 5043)
722.954c (H.B. 5044)

Legislative Analyst: Tyler VanHuysse

FISCAL IMPACT

House Bill 5043 would have a minor fiscal impact on State and local government. Clients would have the ability to seek mediation and there would be costs for the mediation services. The DHHS would have to contract directly with mediation organizations. It is not clear whether community mental health services programs (CMHSPs) would bear financial responsibility for those services. As such, while there would be minor net costs from outside mediation rather than internal processes, it is not clear how the costs potentially could be split between the DHHS and the CMHSPs.

House Bill 5044 would have no fiscal impact on State or local government.

Fiscal Analyst: Steve Angelotti

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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.