

***Testimony to the House Health Policy Committee on SB 1245-47, Dec 13, 2018***

***Mark Reinstein, Mental Health Association in Michigan***

Rep. Vaupel & Members of the Committee,

I'm Mark Reinstein, President & CEO of the Mental Health Association in Michigan, the state's oldest advocacy organization for persons experiencing mental illness. Thank you for this opportunity.

We understand that SB 1245-47 seek to put a dent in inappropriate prescribing, fraud, and other instances of organized crime regarding controlled substances. Few, if anyone, would object to that. But the bills have several flaws, including conflict with federal law and policy, and time should be taken to deal with these. There is no reason to rush the bills, but if they must be rushed, we have attached several proposed amendments.

Our greatest concern is inappropriate and illegal identification of many consumers who have legally received and are not abusing controlled substance prescriptions for medical conditions. For some persons with behavioral conditions, the worst thing that can happen to them is for their diagnoses to be revealed to parties not involved in their care and treatment. And for many of our constituents, having their name, diagnosis and prescribed medications available to law enforcement is stressful and scary, and can interfere with recovery progress.

We appreciate that the final Senate versions of these bills stated that HIPAA de-identification procedures must be followed, but there is more than HIPAA involved here. The Code of Federal Regulations (CFR), Title 42, Part 2, is highly protective of substance use disorder treatment disclosure, and SB 1245-47 don't take this into account. To provide one example of the problems, SB 1247 (p. 3) says, "The (state's new) rules must provide an appropriate electronic format for the reporting of data including, but not limited to patient identifiers..." Yet the federal government in its related guidance says that, while outpatient and drug addiction treatment programs may provide names to automated state prescription programs, there must be patient consent. Additionally, the federal guidance states that automated state prescription programs shall not re-disclose the information they receive, and goes on to say, "It would not be feasible to ensure that the information will not be re-disclosed. Therefore, (outpatient and drug addiction) physicians should not disclose patient-identifying information to (automated state prescription programs)."

Another problem, relating back to HIPAA, is that patient-identifying info, according to the site "Health IT Security," can be disclosed to law enforcement under certain circumstances, including "as required by law...and administrative requests." To prevent confusion on this issue, one of our attached amendments would provide specificity for the circumstances under which law enforcement could request and receive identifying info about patients who have legally received controlled substance prescriptions. Law enforcement should not have carte blanche to get someone's name, diagnosis and drug history simply because the individual has legally received related prescriptions.

We would hope the Legislature doesn't want to play "big brother" to that extent, and we hope you would want to take the time to fix these flawed bills before moving on them. If that can't be done, we respectfully request you make the amendments we have suggested.

Thank you.

## Proposed Amendments SB 1245-47

### **\*To accommodate CFR 42 Part 2**

1247, p. 6, line 8

Between "to," and "regulations" insert: "the code of federal regulations, title 42, part 2, and"

1247, p. 8, lines 24-27 and p. 9, lines 1-2

Change as follows: "review data concerning that patient, **without the patient having been identified**, from the department under subsection (2). A prescriber dispensing buprenorphine, or a drug containing buprenorphine or methadone, to a patient in a substance use disorder program shall also report the data required in subsection (1), **without identifying the patient.**" {Strike ", if federal law does not prohibit the reporting of data concerning the patient, to the department."}

### **\*To further accommodate CFR 42 Part 2 and protect against inappropriate privacy violations**

1247, p. 3, lines 24-25

Strike "patient identifiers, and"

### **\*To further protect against inappropriate privacy violations**

Add in any selected place within one of the three bills:

"Law enforcement may not request, and may not receive under this statute, identifying information about an individual who has legally received prescriptions for controlled substances, unless law enforcement documents that there is an ongoing investigation, prosecution, or adjudication of the recipient regarding a controlled substance, or that there is probable cause to suspect the recipient has committed a violation of state or federal law involving a controlled substance."