

HB19-1125 Mental Health Professional Access to Dismissed Complaint

HB19-1125 proposes an amendment to the Mental Health Practice Act which would give mental health providers access to dismissed complaints filed against them, so long as all information which identifies patients and witnesses is redacted. Patients or witnesses who file complaints against mental health providers do so on the Department of Regulatory Agencies' website by describing the nature of their complaint and providing evidence that may involve documentation of treatment from the mental health provider. Therefore, documentation that may be handed over to mental health providers regarding a dismissed complaint could include the complaint and the evidence used for investigation. The boards which address these complaints are created by the State of Colorado in the Mental Health Practice Act and exist in the Department of Regulatory Agencies.

Passing HB19-1125 would give mental health respondents more information regarding dismissed complaints. This new information would only be helpful to mental health respondents if it was relevant and increases efficiency of mental health provision. This paper determines that HB19-1125 would decrease the efficiency of mental health care provision and should not be passed.

Each board which addresses health provider complaints investigates complaints with respect to a violation of law or regulation with respect to quality of care, patient and resident rights, safety, and billing (Department of Public Health and Environment, 2019). A complaint would be dismissed if a complaint is "outside the powers of the board/program, as defined by legislature or if there is not enough evidence to support a violation of the professional practice act, law, or regulation" (Department of Regulatory Agencies, 2019). As established in the

Mental Health Practice Act, the board related to mental health use the Mental Health Practice Act and rules and regulations prior established by each board to manage each complaint appropriately. The boards that fall under the mental health provider categories are the State Boards of Psychotherapy, Psychology, Social Work, Marriage and Family Therapy, and Professional Counseling (Mental Health Practice Act).

The economic impact of this bill revolves around information asymmetry. Through training and licensing, health providers possess more information than patients with regard to appropriate provision of treatment. Since patients cannot properly assess the treatment they are given, they may experience an imbalance of power or inappropriate treatment. If patients do not have organizations to which they can report concerns, mental health care providers could continue to mistreat patients without checks or balances. Mistreatment of mental health patients could endanger or decrease the quality the patients' lives, along with those who surround them. The boards created in order to regulate patient-provider interactions as a third party can prevent "threats to public health, safety, and welfare of the people of this state against unauthorized, unqualified, and improper application"(Mental Health Practice Act) which could occur as a result of asymmetric information and an imbalance of power.

Patients can experience difficulty evaluating the quality of a service from an official standpoint because they lack the requisite experience. However, a board consisting of mental health professionals has the authority to understand a patient or patient's witness' perspective through a formal medium, such as a complaint, and address it by assessing a situation with respect to a violation of law or regulation (Department of Regulatory Agencies).

If a complaint cannot be appropriately assessed with the evidence given, under the jurisdiction of rules and regulations, or under legislature, the board assessing the complaint maintains the authority to dismiss the claim. The board can write a confidential letter of concern addressing negative acts and include a recommendation of how to remedy a negative situation that has potential to cause harm in the future (Mental Health Practice Act). A letter of concern is warranted when a board deems that a complaint does not warrant formal action but the mental health provider could benefit from an informed warning that contains steps for remediation (Mental Health Practice Act). In this manner, mental health providers have opportunities to improve their services using advice from the boards without accessing dismissed complaints.

Passing HB19-1125 keeps the statute regarding letters of concern and only adds that respondents have the opportunity to access dismissed complaints and their documentation. The important difference between letters of concern and dismissed complaints is that a letter of concern suggests specific actions that would increase the efficiency of the respondent's practice while dismissed complaints only provide the patient's perspective of a situation. Additionally, letters of concern may apply to the respondent's practice as a whole, but dismissed complaints provide insight to a specific interaction.

Since the boards are not guaranteed to be regulated by other parties unless they themselves refer complaints to the Attorney General or the Office of Expedited Settlement, the boards must ensure they aren't biased when judging complaints in order to make appropriate decisions (DORA Complaint FAQ). The Colorado Mental Health Practice act ensures this does not occur by mandating that any board member that may be biased by way of an "immediate personal, private, or financial interest in any matter...shall disclose the fact and shall not vote

upon such matter” (Mental Health Practice Act). Furthermore, all final board decisions are allowed to be reviewed in court, if requested by the respondent or complainant (Mental Health Practice Act). Therefore, even if the board addressing the complaint is proven to be biased, there are remedial actions already in place. In this manner, the residents of Colorado can trust that a dismissed complaint does not warrant attention or can attempt to overturn the assessment of the complaint if they feel the board made an inappropriate decision.

If this bill passes, mental health respondents would have the opportunity to learn about a patient’s interpretation of services provided through a dismissed complaint. However, the trusted third party that regulates asymmetric information and mediates patient-provider conflict deemed the complaint as something that does not warrant a response or have potential to affect change. Therefore, allowing a mental health provider to view a dismissed complaint against them would not provide helpful information or increase efficiency of their practice.

Although the bill specifies that all identifying information in the dismissed complaint and evidence provided for the complaint would be redacted, other details in the documents related to specific interactions or treatments could give the respondent a clue of who the complainant may be. If a mental health respondent knows who the complainant is, there could be a possible decrease in efficiency. Mental health providers may move forward with bias towards a patient if they are aware that a patient is unhappy or uncomfortable with their work.

On the other hand, if a mental health respondent is able to determine who the complainant is when examining details in the dismissed complaint and evidence involved in the investigation, information and behavior portrayed in the complaint could bring new light to

information about a patient that could help the mental health provider with treatment or interaction. The complaint could be an unfiltered and raw portrayal of a patient's experience, rather than what the patient wants the mental health provider to see. If a complaint displays behavior that may help with a diagnosis, the mental health provider could appropriately react in the form of adjusted or added treatment. By allowing the mental health provider to see dismissed complaints, more information is brought to the attention of the mental health provider and provides an opportunity for a mental health provider to give more appropriate treatment to patients.

At the same time, if a mental health provider is performing their role appropriately, the new information about the behavior of a complainant exposed by the dismissed complaint wouldn't add much substance to material the respondent considers when addressing the patient's treatment needs. Since the board dismissed the complaint, an authority in the realm of mental health provision has already determined that the respondent is doing an adequate job at giving patients quality care. Therefore, passing the bill doesn't increase efficiency for treatment of mental health patients.

Since the boards are trustworthy and have regulations in place to eliminate bias, the state of Colorado can trust the decisions the boards make regarding complaints. Therefore, allowing respondents to view dismissed complaints wouldn't increase efficiency, because the board would perform all actions possible in order to increase efficiency in the first place by issuing letters of concern or addressing the complaint with formal action. Passing HB19-1125 only allows for a decrease in efficiency by giving respondents an opportunity to feel biased towards their patients and offer a decreased quality of care if they are able to determine who the complainant is when analyzing the dismissed complaint.

Works Cited

Department of Regulatory Agencies. (2019). *Division of Professions and Occupations: Complaint FAQ*. [online] Available at: https://www.colorado.gov/pacific/dora/DPO_Complaint_FAQ [Accessed 11 Mar. 2019].

Department of Public Health and Environment. (2019). *Health facilities complaints*. [online] Available at: <https://www.colorado.gov/pacific/cdphe/health-facilities-complaints> [Accessed 11 Mar. 2019].

Mental Health Practice Act.