

**MDCR Bill Testimony on HB 5751**

**Jerome Reide, Legislative Liaison**

**Michigan Department of Civil Rights**

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**Committee: Judiciary**

**Testimony By:** Jerome Reide, Legislative Liaison, MDCR

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### **Intent of Legislation**

The bill would regulate the certification of an individual's need for an emotional support animal and limit the species of animal contrary to federal law.

This bill is a Re-introduction of (HB 4910, HB 4911,) ( HB 608, HB 609, HB 610 and HB 663.

### **Summary**

Emotional support animal would mean a common domestic animal that a health care provider has determined is necessary to alleviate the disabling effects of a mental, emotional, psychological, or psychiatric condition or illness for a person with a disability who, in the absence of such animal, would otherwise not have the same housing opportunities provided by a housing provider as those provided to a person that is not disabled. Emotional support animal would not include a service animal. Service animal would mean a dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.

Person with a disability would mean an individual who has a disability as defined in section 3 of the Americans with Disabilities Act of 1990, 42 USC12102,1 and 28 CFR 36.105.

### **Lead Agency Position (Support/Oppose/Neutral)**

- **MDCR Opposes HB 5751 as written**

### **Fiscal/Economic Impact**

There are revenue and budgetary implications in the bill to the Michigan Department of Civil Rights

HUD considers that state and local governments will enact and enforce their own statutes that are substantially equivalent to the FHA. Housing Act. HUD provides Fair Housing Assistance Program (FHAP) funding annually to state and local agencies that administer fair housing laws that provide rights and remedies that are substantially equivalent to those provided by the

FHA. MDCR is currently designated as a FHAP. The issues with HB 5751 may negatively impact MDCR's FHAP designation and associated funding.

#### MDCR Revenue:

To preserve MDCR's HUD contract and federal funding, HB 571 cannot restrict rights related to housing, eliminate protections, or make it more burdensome or difficult for persons with disabilities to exercise their rights under civil rights laws. Some of the terms in HB 5751 may violate the federal Americans with Disabilities Act and the Fair Housing Act.

#### State Of Michigan Budget

Federal Revenue of more than \$233.2 million of Michigan's Section 8 Housing funding could be jeopardized by intrusive questions about prospective tenants' health and need for emotional support animals as well as requirements that are broader than HUD requirements.

patient's disability.

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The bill may allow arbitrary disclosure of medical, mental and health conditions as well as doctor patient relationships.

FHA and HUD guidance currently allow for support animals (not service animals) to possibly be of any species. The guidance also requires that the person with a disability is responsible for feeding, maintaining, providing veterinary care, and controlling any assistance animal and that no specific training is required of support animals.

Section 3(a): requires commonly kept household animals such as dogs and cats. It does not allow for unique animals which directly conflicts with HUD guidance.

Section 3(a): provides for emotional support animals for persons with mental, emotional, psychological, and/or psychiatric conditions but seemingly excludes persons with physical disabilities. HUD does not have this exclusion.

Section 5(1)(a): requires a provider-patient relationship that has been established at least 30 days prior to issuance of a certification. Neither FHA nor HUD require this timeframe.

Section 5(2): invalidates certification letters that are issued by providers paid specifically for ESA certification. We see a lot of cases involving internet/online providers getting paid to provide letters, but what MDCR has seen are a couple of calls between the claimant and provider "establishing" a relationship prior to issuance of a letter, sometimes in less than a 30-day timeframe and sometimes longer. After claimants receive their certification from these services, they tend to discontinue contact with the provider. HUD is aware of concerns related to internet/online certification providers, but updated guidance has not been issued yet. We

are patiently waiting for updated guidance. We are not certain invalidating all letters from these types of providers is proper.

- The bill restricts acceptable animals to common household animals. This conflicts with HUD's guidance stating that unique animals may be permitted as a reasonable accommodation.
- The bill singles out people who require animals that provide emotional support for disabilities relating to mental, emotional, psychological, or psychiatric conditions. HUD allows for support animals (again not service animals), trained or untrained, that do work, perform tasks, and/or provide assistance for people with a wide variety of disabilities, not exclusively those related to mental or psychiatric conditions.
- The bill requires the health care provider to have an established provider/patient relationship for at least 30 days before they can certify the need for a support animal. There is no hardline number of patient/provider relationship days specified in the Fair Housing Act or HUD guidance. This may delay a person obtaining the required therapeutic animal, thus potentially exacerbating the symptoms of the disability.
- HUD guidance says that while a housing provider may request information regarding both the disability and the disability-related need for the animal, they are not entitled to know an individual's diagnosis. The proposed bill is not clear on the limited scope of the information that the certification may include.