



Ohio House Behavioral Health and Recovery Supports Committee

Proponent Testimony on Sub. HB 523

Scott A. Sylak
Executive Director
Mental Health and Recovery Services Board of Lucas County
May 19, 2022

Chairwoman Carruthers, Vice-Chair Pavliga, and members of the House Behavioral Health and Recovery Supports Committee, thank you for this opportunity to submit testimony in support of Sub HB 523. My name is Scott Sylak. I am the Executive Director of the Mental Health and Recovery Services Board of Lucas County and President Elect of the Ohio Association of County Behavioral Health Authorities.

As President Elect of our state association I would like you to know that our membership has voted to support Sub HB-523 as written. We have worked closely with the bill's sponsor and believe passing this legislation as written is in the best interest of the clients, families and the communities we serve. Over the upcoming months, you are likely to hear opponent testimony that attempts to paint a picture of over-controlling boards wanting to make it harder for treatment providers to provide care. Nothing will be farther from the truth.

All 50 Boards across the state want improved access, quality services and equitable outcomes for all clients. All gains made in this legislation are long overdue and in line with standard business practices for similar entities. I believe passing this legislation will provide Boards the tools we need to construct and maintain a system of care that is responsive to the needs of our entire community

As stewards of taxpayer funds, its essential that Boards have both the responsibility and authority to be responsive to community needs. ORC 340 in its current form provides Boards with significant responsibility, but substantial barriers to exercising authority because the current language is outdated and out of line with current state and local government contracting requirements. The changes in Sub HB 523 brings contracting in line with these groups.

Chapter 340 currently dictates certain aspects of how ADAMH Boards contract with community behavioral health providers for the provision of services. Sub HB 523 provides for more local control on these decisions by providing ADAMH Boards the ability to make contracting and procurement decisions in the way that best uses federal, state and local dollars.

The proposed changes would allow Boards to make decisions about the services they purchase based on their local assessment of need and which providers are best suited to provide quality services.

While my peers will focus on other aspects of the draft legislation, I am going to focus on two changes that have a direct impact on Board operations and have been used recently by contract agencies in several communities to initiate litigation. Because, my Board is currently involved in

litigation recently filed in Federal Court that is directly related to the use of the 120-day notice process, I will limit my remarks to an evaluation of the proposed legislation and may not be in a position to answer certain questions.

The current 120-day requirement is unlike any other requirement found in Ohio Revised Code. In the last two contracting cycles, multiple lawsuits have been filed over the interpretation of the 120-Day Notice language. The dollars that ADAMH Boards have spent defending against these lawsuits are dollars that are better spent on funding behavioral health services and supports. Locally, we have spent \$330,000 defending ourselves so far.

It's my opinion that the litigiousness around the current 120-day requirement inhibits Boards from making the contracting decisions that they determine to be in the best interest of clients, the community and the best use of public dollars. When Boards do decide to make those tough decisions, they do so under the current threat of being sued. It's is easy to see how system's evolution would be hampered under these conditions. The proposed language removes the present 120-day requirement and the impediment to making these tough decisions. However, the proposed law recognizes that due process is important and requires that as new contracts are negotiated, due process for early termination be included.

Requiring a 120-day notice is most often not practical in the current behavioral health system. Future funding is not usually known 120 days prior to the end of the fiscal year, some funds are allocated regionally, some are for one year only, some funds are federal and require action to be taken for non-compliance that may not align with the 120-day notice requirement. Additionally, what happens if a critical contract issue is identified within the 120-day period? The current legislative language may require continued funding for the next fiscal year. The proposed language addresses these concerns as well.

Finally, I urge your support in clarifying that Boards have the right to use an RFP process for contracting if they choose to. As mentioned previously, this too has been a source of past litigation against my board. We organized a community process around crisis services that included a recommendation to RFP those services. In response, a law suit was filed in February 2021 which effectively interrupted the RFP process. The lawsuit was voluntarily withdrawn without prejudice in January 2022. Think about all those wasted resources.

It's important to note that this is not about doing away with providers. Boards need a healthy provider system. However, as the provider's attorney stated at our injunction hearing *"if we don't like the present statutory requirement for contracting than we should go to the legislature to get it changed."*

So, here we are.

Madam Chairwoman and members of the Committee, thank you for the opportunity to provide testimony today. Should you have any questions, I would be happy to answer them.