

SUBSTITUTE FOR
SENATE BILL NO. 1052

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending section 748 (MCL 330.1748), as amended by 1998 PA 497.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 748. (1) Information in the record of a recipient, and
2 other information acquired in the course of providing mental health
3 services to a recipient, shall be kept confidential and shall not
4 be open to public inspection. The information may be disclosed
5 outside the department, community mental health services program,
6 licensed facility, or contract provider, whichever is the holder of
7 the record, only in the circumstances and under the conditions set
8 forth in this section or section 748a.

9 (2) If information made confidential by this section is
10 disclosed, the identity of the individual to whom it pertains shall

1 be protected and shall not be disclosed unless it is germane to the
2 authorized purpose for which disclosure was sought. ~~and, when~~
3 **WHEN** practicable, no other information shall be disclosed unless it
4 is germane to the authorized purpose for which disclosure was
5 sought.

6 (3) An individual receiving information made confidential by
7 this section shall disclose the information to others only to the
8 extent consistent with the authorized purpose for which the
9 information was obtained.

10 (4) For case record entries made subsequent to March 28, 1996,
11 information made confidential by this section shall be disclosed to
12 an adult recipient, upon the recipient's request, if the recipient
13 does not have a guardian and has not been adjudicated legally
14 incompetent. The holder of the record shall comply with the adult
15 recipient's request for disclosure as expeditiously as possible but
16 in no event later than the earlier of 30 days after receipt of the
17 request or, if the recipient is receiving treatment from the holder
18 of the record, before the recipient is released from treatment.

19 (5) Except as otherwise provided in this section or section
20 748a, when requested, information made confidential by this section
21 shall be disclosed only under 1 or more of the following
22 circumstances:

23 (a) ~~Pursuant to~~ **UNDER** an order or a subpoena of a court of
24 record or a subpoena of the legislature, unless the information is
25 privileged by law.

26 (b) To a prosecuting attorney as necessary for the prosecuting
27 attorney to participate in a proceeding governed by this act.

1 (c) To an attorney for the recipient, with the consent of the
2 recipient, the recipient's guardian with authority to consent, or
3 the parent with legal and physical custody of a minor recipient.

4 (d) If necessary in order to comply with another provision of
5 law.

6 (e) To the department if the information is necessary in order
7 for the department to discharge a responsibility placed upon it by
8 law.

9 (f) To the office of the auditor general if the information is
10 necessary for that office to discharge its constitutional
11 responsibility.

12 (g) To a surviving spouse of the recipient or, if there is no
13 surviving spouse, to the individual or individuals most closely
14 related to the deceased recipient within the third degree of
15 consanguinity as defined in civil law, for the purpose of applying
16 for and receiving benefits.

17 (6) Except as otherwise provided in subsection (4), if consent
18 is obtained from the recipient, the recipient's guardian with
19 authority to consent, the parent with legal custody of a minor
20 recipient, or the court-appointed personal representative or
21 executor of the estate of a deceased recipient, information made
22 confidential by this section may be disclosed to all of the
23 following:

24 (a) A provider of mental health services to the recipient.

25 (b) The recipient or his or her guardian or the parent of a
26 minor recipient or another individual or agency unless in the
27 written judgment of the holder the disclosure would be detrimental

1 to the recipient or others.

2 (7) Information may be disclosed ~~in the discretion of~~ **BY** the
3 holder of the record under 1 or more of the following
4 circumstances:

5 (a) As necessary in order for the recipient to apply for or
6 receive benefits.

7 **(B) AS NECESSARY FOR TREATMENT, PAYMENT, OR HEALTH CARE**
8 **OPERATIONS IN ACCORDANCE WITH THE HEALTH INSURANCE PORTABILITY AND**
9 **ACCOUNTABILITY ACT OF 1996, PUBLIC LAW 104-191, UNLESS DISCLOSURE**
10 **OF THE INFORMATION IS FURTHER RESTRICTED UNDER THIS SECTION.**

11 **(C) ~~(b)~~**As necessary for the purpose of outside research,
12 evaluation, accreditation, or statistical compilation. The
13 individual who is the subject of the information shall not be
14 identified in the disclosed information unless the identification
15 is essential in order to achieve the purpose for which the
16 information is sought or if preventing the identification would
17 clearly be impractical, but not if the subject of the information
18 is likely to be harmed by the identification.

19 **(D) ~~(e)~~**To a provider of mental or other health services or a
20 public agency, if there is a compelling need for disclosure based
21 upon a substantial probability of harm to the recipient or other
22 individuals.

23 (8) If required by federal law, the department or a community
24 mental health services program or licensed facility shall grant a
25 representative of the protection and advocacy system designated by
26 the governor in compliance with section 931 access to the records
27 of all of the following:

1 (a) A recipient, if the recipient, the recipient's guardian
2 with authority to consent, or a minor recipient's parent with legal
3 and physical custody of the recipient has consented to the access.

4 (b) A recipient, including a recipient who has died or whose
5 location is unknown, if all of the following apply:

6 (i) Because of mental or physical condition, the recipient is
7 unable to consent to the access.

8 (ii) The recipient does not have a guardian or other legal
9 representative, or the recipient's guardian is the state.

10 (iii) The protection and advocacy system has received a
11 complaint on behalf of the recipient or has probable cause to
12 believe based on monitoring or other evidence that the recipient
13 has been subject to abuse or neglect.

14 (c) A recipient who has a guardian or other legal
15 representative if all of the following apply:

16 (i) A complaint has been received by the protection and
17 advocacy system or there is probable cause to believe the health or
18 safety of the recipient is in serious and immediate jeopardy.

19 (ii) Upon receipt of the name and address of the recipient's
20 legal representative, the protection and advocacy system has
21 contacted the representative and offered assistance in resolving
22 the situation.

23 (iii) The representative has failed or refused to act on behalf
24 of the recipient.

25 (9) The records, data, and knowledge collected for or by
26 individuals or committees assigned a peer review function,
27 including the review function under section 143a(1), are

1 confidential, shall be used only for the purposes of peer review,
2 are not public records, and are not subject to court subpoena. This
3 subsection does not prevent disclosure of individual case records
4 ~~pursuant~~**—ACCORDING** to this section.

5 (10) The holder of an individual's record, if authorized to
6 release information for clinical purposes by the individual or the
7 individual's guardian or a parent of a minor, shall release a copy
8 of the entire medical and clinical record to the provider of mental
9 health services.