



House Bill 4862

Sponsor: Rep. Claude Trim

Committee: Mental Health

Complete to 6-5-91

A SUMMARY OF HOUSE BILL 4862 AS INTRODUCED 5-22-91

In accordance with the federal Developmental Disabilities Assistance and Bill of Rights Act, the Mental Health Code requires the governor to designate an agency to implement a program for the protection and advocacy of the rights of people with developmental disabilities and mental illness. Currently, this designated agency is the Michigan Protection and Advocacy Service, Inc., and under the code the Department of Mental Health (DMH), a community mental health (CMH) program, or a licensed private facility must give the agency access to the records of developmentally disabled or mentally ill people who are housed in state or local facilities if (a) the agency had received a complaint from or on behalf of the resident or (b) the resident either does not have a legal guardian or the state (or someone designated by the state) is his or her legal guardian.

The bill would amend the code to require the department, a county CMH program, or a facility licensed by or under contract to the state to help the Michigan Protection and Advocacy Service investigate abuse or neglect of mental health services recipients not only by giving the agency access, with or without notice, to the required records but also access to the resident suspected of having been abused or neglected and access to the facility where he or she resides.

The bill also would revise the section regarding the agency's access to records. It would replace references to records of people with developmental disabilities or mentally ill people with language that instead referred to records of people "receiving mentally health services." In addition, it would delete the existing two circumstances under which such patients' records would have to be released and replace them with the following three conditions:

(1) If the person were a client of the protection and advocacy system and his or her legal representative (including legal guardian or conservator) authorized access to the records;

(2) if the person (including someone who had died or whose location was unknown) were suspected of having been subjected to abuse or neglect and either was unable to authorize access because of a mental or physical condition or had no legal representative other than the state; or

(3) if the person, even though he or she had a legal representative, were in "serious and immediate jeopardy" and the agency had contacted his or her representative and offered to help resolve the situation but the representative had failed or refused to act on behalf of the person in question.

The bill would define "records" to include:

- * reports prepared or received by any facility giving care or treatment,
- * reports prepared as part of an investigation into incidents of abuse, neglect, injury, or death at the facility, and
- * discharge planning records.

The bill also would replace language referring to "mentally ill persons" with language which instead referred to "persons with mental illness."

MCL 330.1748 and 330.1931