

HOUSE BILL No. 4862

May 22, 1991, Introduced by Reps. Trim, Gubow, DeLange, Harder, Baade, Nye, Hertel and McNutt and referred to the Committee on Mental Health.

A bill to amend sections 748 and 931 of Act No. 258 of the Public Acts of 1974, entitled as amended

"Mental health code,"

section 748 as amended by Act No. 167 of the Public Acts of 1990 and section 931 as added by Act No. 192 of the Public Acts of 1987, being sections 330.1748 and 330.1931 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 748 and 931 of Act No. 258 of the
2 Public Acts of 1974, section 748 as amended by Act No. 167 of the
3 Public Acts of 1990 and section 931 as added by Act No. 192 of
4 the Public Acts of 1987, being sections 330.1748 and 330.1931 of
5 the Michigan Compiled Laws, are amended to read as follows:

6 Sec. 748. (1) Information in the record of a recipient, and
7 other information acquired in the course of providing mental

1 health services to a recipient, shall be kept confidential and
2 shall not be open to public inspection. The information may be
3 disclosed outside the department, county community mental health
4 program, or licensed private facility, whichever is the holder of
5 the record, only in the circumstances and under the conditions
6 set forth in this section.

7 (2) When information made confidential by this section is
8 disclosed, the identity of the individual to whom it pertains
9 shall be protected and shall not be disclosed unless it is ger-
10 mane to the authorized purpose for which disclosure was sought;
11 and, when practicable, no other information shall be disclosed
12 unless it is germane to the authorized purpose for which disclo-
13 sure was sought.

14 (3) Any person receiving information made confidential by
15 this section shall disclose the information to others only to the
16 extent consistent with the authorized purpose for which the
17 information was obtained.

18 (4) Except as provided otherwise in subsection (8), when
19 requested, information made confidential by this section shall be
20 disclosed only under 1 or more of the following circumstances:

21 (a) Pursuant to orders or subpoenas of a court of record, or
22 subpoenas of the legislature, unless the information is made
23 privileged by law.

24 (b) To a prosecuting attorney as necessary for the prosecut-
25 ing attorney to participate in a proceeding governed by this
26 act.

1 (c) To an attorney for the recipient, with the recipient's
2 consent.

3 (d) When necessary in order to comply with another provision
4 of law.

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

8 (f) To the office of the auditor general when the informa-
9 tion is necessary for that office to discharge its constitutional
10 responsibility.

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

16 (5) Information made confidential by this section may be
17 disclosed if the holder of the record and the recipient, the par-
18 ents of the recipient if the recipient is less than 18 years of
19 age, or the recipient's legally appointed guardian consent:

20 (a) To providers of mental health services to the
21 recipient.

22 (b) To the recipient or any other person or agency, provided
23 that in the judgment of the holder, the disclosure would not be
24 detrimental to the recipient or others.

25 (6) Information may be disclosed in the discretion of the
26 holder of the record:

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

3 (b) As necessary for the purpose of outside research, evalu-
4 ation, accreditation, or statistical compilation, provided that
5 the person who is the subject of the information can be identi-
6 fied from the disclosed information only when such identification
7 is essential in order to achieve the purpose for which the infor-
8 mation is sought or when preventing such identification would
9 clearly be impractical, but in no event when the subject of the
10 information is likely to be harmed by such identification.

11 (c) To providers of mental or other health services or a
12 public agency, when there is a compelling need for disclosure
13 based upon a substantial probability of harm to the recipient or
14 other persons.

15 (7) The department or a county community mental health pro-
16 gram or licensed private facility shall grant a representative of
17 the protection and advocacy system designated by the governor in
18 compliance with section 931 access to ~~the records of a person~~
19 ~~with developmental disabilities who resides in a facility for~~
20 ~~persons with developmental disabilities or a mentally ill person~~
21 ~~who resides in a facility for mentally ill persons if both of the~~
22 ~~following apply~~ ALL RECORDS OF A PERSON RECEIVING MENTAL HEALTH
23 SERVICES WHO IS 1 OR MORE OF THE FOLLOWING:

24 ~~(a) A complaint has been received by the protection and~~
25 ~~advocacy system from or on behalf of the resident.~~

1 ~~(b) The resident does not have a legal guardian, or the~~
2 ~~state or the designee of the state is the legal guardian of the~~
3 ~~resident.~~

4 (A) A CLIENT OF THE PROTECTION AND ADVOCACY SYSTEM, IF THE
5 PERSON, OR THE LEGAL GUARDIAN, CONSERVATOR, OR OTHER LEGAL REPRESENTATIVE OF THE PERSON HAS AUTHORIZED ACCESS TO THE RECORDS.

7 (B) A PERSON, INCLUDING A PERSON WHO HAS DIED OR WHOSE LOCATION IS UNKNOWN, WITH RESPECT TO WHOM A COMPLAINT HAS BEEN
8 RECEIVED BY THE PROTECTION AND ADVOCACY SYSTEM OR WITH RESPECT TO
9 WHOM AS A RESULT OF MONITORING OR OTHER ACTIVITIES THERE IS PROBABLE CAUSE TO BELIEVE THAT THE PERSON HAS BEEN SUBJECT TO ABUSE
10 OR NEGLECT, IF 1 OF THE FOLLOWING APPLIES:

13 (i) BECAUSE OF A MENTAL OR PHYSICAL CONDITION, THE PERSON IS
14 UNABLE TO AUTHORIZE THE PROTECTION AND ADVOCACY SYSTEM TO HAVE
15 ACCESS TO THE RECORDS.

16 (ii) THE PERSON DOES NOT HAVE A LEGAL GUARDIAN, CONSERVATOR,
17 OR OTHER LEGAL REPRESENTATIVE, OR THE LEGAL GUARDIAN OF THE
18 PERSON IS THE STATE.

19 (C) A PERSON WHO HAS A LEGAL GUARDIAN, CONSERVATOR, OR OTHER
20 LEGAL REPRESENTATIVE AND WITH RESPECT TO WHOM A COMPLAINT HAS
21 BEEN RECEIVED BY THE PROTECTION AND ADVOCACY SYSTEM OR WITH
22 RESPECT TO WHOM THERE IS PROBABLE CAUSE TO BELIEVE THE HEALTH OR
23 SAFETY OF THE INDIVIDUAL IS IN SERIOUS AND IMMEDIATE JEOPARDY, IF
24 ALL OF THE FOLLOWING APPLY:

25 (i) THE REPRESENTATIVE OF THE PERSON HAS BEEN CONTACTED BY
26 THE PROTECTION AND ADVOCACY SYSTEM UPON THE SYSTEM'S RECEIPT OF
27 THE NAME AND ADDRESS OF THE REPRESENTATIVE.

1 (ii) THE PROTECTION AND ADVOCACY SYSTEM HAS OFFERED
2 ASSISTANCE TO THE REPRESENTATIVE TO RESOLVE THE SITUATION.

3 (iii) THE REPRESENTATIVE HAS FAILED OR REFUSED TO ACT ON
4 BEHALF OF THE PERSON.

5 (8) The records, data, and knowledge collected for or by
6 individuals or committees assigned a review function under
7 section 143A(1) are confidential, shall be used only for the pur-
8 poses of review, are not public records, and are not subject to
9 court subpoena. This subsection does not prevent disclosure of
10 individual case records pursuant to this section.

11 (9) AS USED IN SUBSECTION (7), "RECORDS" INCLUDES, BUT IS
12 NOT LIMITED TO, REPORTS PREPARED OR RECEIVED BY ANY STAFF OF A
13 FACILITY RENDERING CARE OR TREATMENT, OR REPORTS PREPARED BY AN
14 AGENCY OR STAFF PERSON CHARGED WITH INVESTIGATING REPORTS OF
15 INCIDENTS OF ABUSE, NEGLECT, INJURY, OR DEATH OCCURRING AT THE
16 FACILITY, WHICH DESCRIBE THOSE INCIDENTS AND THE STEPS TAKEN TO
17 INVESTIGATE THOSE INCIDENTS, AND DISCHARGE PLANNING RECORDS.

18 Sec. 931. (1) The governor shall designate an agency to
19 implement a program for the protection and advocacy of the rights
20 of persons with developmental disabilities pursuant to the
21 ~~developmentally disabled assistance and bill of rights act,~~
22 ~~Public Law 94-103, 89 Stat. 486~~ DEVELOPMENTAL DISABILITIES
23 ASSISTANCE AND BILL OF RIGHTS ACT OF 1990, PUBLIC LAW 101-496.
24 The designated agency shall have the authority to pursue legal,
25 administrative, and other appropriate remedies to protect the
26 rights of ~~the developmentally disabled~~ PERSONS WITH
27 DEVELOPMENTAL DISABILITIES and to investigate allegations of

1 abuse and neglect. The designated agency shall be independent of
2 any state agency that provides treatment or services other than
3 advocacy services to persons with developmental disabilities.

4 (2) The agency designated under subsection (1) shall imple-
5 ment a program for the protection and advocacy of the rights of
6 ~~mentally ill~~ persons WITH MENTAL ILLNESS pursuant to the pro-
7 tection and advocacy for mentally ill individuals act of 1986,
8 Public Law 99-319, 100 Stat. 478. The designated agency ~~shall~~
9 ~~have the authority to~~ MAY pursue legal, administrative, and
10 other appropriate remedies to protect the rights of ~~mentally~~
11 ~~ill~~ persons WITH MENTAL ILLNESS and to investigate allegations
12 of abuse or neglect of ~~mentally ill~~ persons WITH MENTAL
13 ILLNESS. The designated agency shall be independent of any state
14 agency that provides treatment or services other than advocacy
15 services to ~~mentally ill~~ persons WITH MENTAL ILLNESS.

16 (3) The governor shall designate an appropriate state offi-
17 cial to serve as liaison between the agency designated to imple-
18 ment the protection and advocacy programs and the state depart-
19 ments and agencies that provide services to persons with develop-
20 mental disabilities and ~~mentally ill persons~~ MENTAL ILLNESS.

21 (4) IN ORDER TO ENABLE THE AGENCY DESIGNATED IN SUBSECTION
22 (1) TO EXERCISE ITS AUTHORITY UNDER SUBSECTIONS (1) AND (2) TO
23 INVESTIGATE INCIDENTS INVOLVING ABUSE OR NEGLECT OF A PERSON
24 RECEIVING MENTAL HEALTH SERVICES, THE DEPARTMENT, A COUNTY COMMU-
25 NITY MENTAL HEALTH PROGRAM, AND A FACILITY LICENSED BY THE STATE
26 OR UNDER CONTRACT TO A COUNTY PROGRAM SHALL GRANT THE AGENCY
27 ACCESS, WITH OR WITHOUT NOTICE, TO ALL OF THE FOLLOWING:

1 (A) A PERSON WITH RESPECT TO WHOM THE AGENCY HAS RECEIVED A
2 REPORT OF AN INCIDENT OF ABUSE OR NEGLECT OR WITH RESPECT TO WHOM
3 THE AGENCY HAS PROBABLE CAUSE TO BELIEVE AN INCIDENT OF ABUSE OR
4 NEGLECT HAS OCCURRED.

5 (B) THE FACILITY IN WHICH THE PERSON DESCRIBED IN SUBDIVI-
6 SION (A) IS RECEIVING SERVICES.

7 (C) THE RECORDS OF THE INDIVIDUAL DESCRIBED IN SUBDIVISION
8 (A), PURSUANT TO SECTION 748.