



# SENATE BILL No. 67

January 17, 1995, Introduced by Senator BERRYMAN and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend sections 700 and 748 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, being sections 330.1700 and 330.1748 of the Michigan Compiled Laws; and to add sections 117 and 247.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 700 and 748 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, being sections 330.1700 and 330.1748 of the  
4 Michigan Compiled Laws, are amended and sections 117 and 247 are  
5 added to read as follows:

6 SEC. 117. (1) IF THE DEPARTMENT IS NOTIFIED BY A COUNTY  
7 PROGRAM PURSUANT TO SECTION 247 OR OTHERWISE BECOMES AWARE OF THE  
8 DEATH OF A RECIPIENT, THE DEPARTMENT SHALL IMMEDIATELY INITIATE

1 AND CONDUCT A FORMAL INVESTIGATION OF THE CAUSE AND CIRCUMSTANCES  
2 OF THE RECIPIENT'S DEATH, INCLUDING THE APPROPRIATENESS OF CARE  
3 RECEIVED BY THE RECIPIENT PRIOR TO DEATH.

4 (2) WITHIN 6 WEEKS AFTER LEARNING OF THE DEATH OF A RECIPI-  
5 ENT, THE DEPARTMENT SHALL NOTIFY THE RECIPIENT'S SURVIVING SPOUSE  
6 OR, IF THERE IS NO SURVIVING SPOUSE, THE RECIPIENT'S PLENARY  
7 GUARDIAN, IF ANY, OR THE INDIVIDUAL MOST CLOSELY RELATED TO THE  
8 RECIPIENT WITHIN THE THIRD DEGREE OF CONSANGUINITY AS DEFINED BY  
9 COMMON LAW, OF THE DEPARTMENT'S INVESTIGATION AND OF THE  
10 INDIVIDUAL'S RIGHT TO REQUEST AND RECEIVE A COPY OF THE REPORT OF  
11 THE INVESTIGATION. UPON THAT INDIVIDUAL'S REQUEST, THE DEPART-  
12 MENT SHALL PROVIDE THE INDIVIDUAL WITH A COPY OF ITS FINDINGS.

13 (3) THE DEPARTMENT SHALL PROVIDE A QUARTERLY REPORT TO THE  
14 LEGISLATURE SUMMARIZING ALL DEATHS OF RECIPIENTS DURING THE PRE-  
15 CEDING QUARTER. THE REPORT SHALL INCLUDE THE DEPARTMENT'S FIND-  
16 INGS ON THE CAUSE OF DEATH AND THE APPROPRIATENESS OF CARE  
17 RECEIVED BY EACH RECIPIENT PRIOR TO HIS OR HER DEATH.

18 (4) AS USED IN THIS SECTION:

19 (A) "COUNTY PROGRAM" MEANS A COUNTY COMMUNITY MENTAL HEALTH  
20 PROGRAM ESTABLISHED PURSUANT TO CHAPTER 2.

21 (B) "PLENARY GUARDIAN" MEANS THAT TERM AS DEFINED IN SECTION  
22 600.

23 (C) "RECIPIENT" MEANS THAT TERM AS DEFINED IN SECTION 700.

24 SEC. 247. A COUNTY COMMUNITY MENTAL HEALTH PROGRAM SHALL  
25 NOTIFY THE DEPARTMENT IF AN INDIVIDUAL RECEIVING MENTAL HEALTH  
26 SERVICES FROM EITHER THAT PROGRAM, OR FROM A HOSPITAL OR AGENCY  
27 UNDER CONTRACT WITH THE COUNTY PROGRAM, DIES. THE NOTIFICATION

1 SHALL BE GIVEN TO THE DEPARTMENT WITHIN 5 BUSINESS DAYS AFTER THE  
2 COUNTY PROGRAM LEARNS OF THE INDIVIDUAL'S DEATH.

3 Sec. 700. As used in this chapter, unless the context  
4 requires otherwise:

5 (a) "Department" means the department of mental health.

6 (b) "County community mental health program" means a program  
7 operated by or under contract with a county community mental  
8 health board.

9 (c) "Facility" means a residential facility which provides  
10 mental health services, and which is licensed by the state or is  
11 operated by or under contract with a public agency.

12 (d) "Resident" means a person who resides in a facility.

13 (e) "Recipient" means a person who receives mental health  
14 services from a facility, or a person who receives mental health  
15 services from an entity other than a facility which is operated  
16 by or under contract with the department or a county community  
17 mental health program.

18 (f) "Governing body" means the director of the department  
19 for facilities and other entities operated by the department; the  
20 county director for facilities and other entities operated by a  
21 county community mental health program; or the agency, organiza-  
22 tion, or person having the primary legal authority over other  
23 facilities.

24 (g) "Consent" means an agreement in writing executed by the  
25 recipient, his OR HER guardian if empowered to execute a consent,  
26 or his OR HER parent if he OR SHE is a minor.

1 (H) "MINOR" MEANS A PERSON WHO IS LESS THAN 18 YEARS OF  
2 AGE.

3 (I) "PLENARY GUARDIAN" MEANS THAT TERM AS DEFINED IN SECTION  
4 600.

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

13 (2) When information made confidential by this section is  
14 disclosed, the identity of the individual to whom it pertains  
15 shall be protected and shall not be disclosed unless it is ger-  
16 mane to the authorized purpose for which disclosure was sought;  
17 and, when practicable, no other information shall be disclosed  
18 unless it is germane to the authorized purpose for which disclo-  
19 sure was sought.

20 (3) ~~Any~~ A person receiving information made confidential  
21 by this section shall disclose the information to others only to  
22 the extent consistent with the authorized purpose for which the  
23 information was obtained.

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

1 (a) Pursuant to orders or subpoenas of a court of record, or  
2 subpoenas of the legislature, unless the information is made  
3 privileged by law.

4 (b) To a prosecuting attorney as necessary for the prosecut-  
5 ing attorney to participate in a proceeding governed by this  
6 act.

7 (c) To an attorney for the recipient, with the ~~recipient's~~  
8 consent OF THE RECIPIENT, THE RECIPIENT'S SPOUSE, THE RECIPIENT'S  
9 PLENARY GUARDIAN, OR THE PARENTS OF A MINOR RECIPIENT.

10 (d) When necessary in order to comply with another provision  
11 of law.

12 (e) To the department when the information is necessary in  
13 order for the department to discharge a responsibility placed  
14 upon it by law.

15 (f) To the office of the auditor general when the informa-  
16 tion is necessary for that office to discharge its constitutional  
17 responsibility.

18 (g) To ~~a~~ THE surviving spouse of the recipient ~~for pur-~~  
19 ~~poses of applying for and receiving benefits~~ or, if there is no  
20 surviving spouse, to the ~~person~~ INDIVIDUAL or ~~persons~~  
21 INDIVIDUALS most closely related to the deceased recipient within  
22 the third degree of consanguinity as defined in civil law.

23 (H) TO A STANDING COMMITTEE OR APPROPRIATIONS SUBCOMMITTEE  
24 OF EITHER HOUSE OF THE LEGISLATURE HAVING JURISDICTION OVER  
25 MENTAL HEALTH MATTERS DURING A MEETING OF THAT STANDING COMMITTEE  
26 OR SUBCOMMITTEE HELD IN CLOSED SESSION, PURSUANT TO THE OPEN

1 MEETINGS ACT, ACT NO. 267 OF THE PUBLIC ACTS OF 1976, BEING  
2 SECTIONS 15.261 TO 15.275 OF THE MICHIGAN COMPILED LAWS.

3 (I) TO THE PARENT OF A MINOR RECIPIENT.

4 (J) TO THE PLENARY GUARDIAN OF A RECIPIENT.

5 (K) TO THE RECIPIENT UPON HIS OR HER WRITTEN REQUEST OR TO  
6 ANY OTHER PERSON OR AGENCY TO WHICH THE RECIPIENT, THE  
7 RECIPIENT'S PLENARY GUARDIAN, OR THE PARENT OF A MINOR RECIPIENT  
8 REQUESTS IN WRITING THAT THE INFORMATION BE SENT.

9 (5) Information made confidential by this section may be  
10 disclosed TO PROVIDERS OF MENTAL HEALTH SERVICES TO THE RECIPIENT  
11 if the holder of the record and the recipient, the parents of the  
12 recipient if the recipient is ~~less than 18 years of age~~ A  
13 MINOR, or the recipient's ~~legally appointed~~ PLENARY guardian  
14 consent. ~~→~~

15 ~~(a) To providers of mental health services to the~~  
16 ~~recipient.~~

17 ~~(b) To the recipient or any other person or agency, provided~~  
18 ~~that in the judgment of the holder, the disclosure would not be~~  
19 ~~detrimental to the recipient or others.~~

20 (6) Information may be disclosed in the discretion of the  
21 holder of the record:

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

24 (b) As necessary for the purpose of outside research, evalu-  
25 ation, accreditation, or statistical compilation, provided that  
26 the person who is the subject of the information can be  
27 identified from the disclosed information only when ~~such~~ THAT

1 identification is essential in order to achieve the purpose for  
2 which the information is sought or when preventing ~~such~~ THAT  
3 identification would clearly be impractical, but in no event when  
4 the subject of the information is likely to be harmed by ~~such~~  
5 identification.

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

10 (7) The department or a county community mental health pro-  
11 gram or licensed private facility shall grant a representative of  
12 the protection and advocacy system designated by the governor in  
13 compliance with section 931 access to the records of a person  
14 with developmental disabilities who resides in a facility for  
15 persons with developmental disabilities or a mentally ill person  
16 who resides in a facility for mentally ill persons if both of the  
17 following apply:

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

20 (b) The resident does not have a legal guardian, or the  
21 state or the designee of the state is the legal guardian of the  
22 resident.

23 (8) The records, data, and knowledge collected for or by  
24 individuals or committees assigned a review function under  
25 section 143a(1) are confidential ~~—~~ AND shall be used only for  
26 the purposes of review. ~~—~~ THE ITEMS DESCRIBED IN THIS  
27 SUBSECTION are not public records ~~—~~ and are not subject to

1 court subpoena. This subsection does not prevent disclosure of  
2 individual case records pursuant to this section.