



SENATE BILL No. 1048

May 22, 1996, Introduced by Senator GOUGEON and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend sections 152, 205, 302, 712, 719, 800, 804, 806, 812, 817, and 828 of Act No. 258 of the Public Acts of 1974, entitled as amended

"Mental health code,"

sections 152, 302, 712, 800, 804, 806, 812, and 828 as amended and sections 205, 719, and 817 as added by Act No. 290 of the Public Acts of 1995, being sections 330.1152, 330.1205, 330.1302, 330.1712, 330.1719, 330.1800, 330.1804, 330.1806, 330.1812, 330.1817, and 330.1828 of the Michigan Compiled Laws; and to add section 472a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 152, 205, 302, 712, 719, 800, 804, 806,
2 812, 817, and 828 of Act No. 258 of the Public Acts of 1974,
3 sections 152, 302, 712, 800, 804, 806, 812, and 828 as amended
4 and sections 205, 719, and 817 as added by Act No. 290 of the

1 Public Acts of 1995, being sections 330.1152, 330.1205, 330.1302,
2 330.1712, 330.1719, 330.1800, 330.1804, 330.1806, 330.1812,
3 330.1817, and 330.1828 of the Michigan Compiled Laws, are amended
4 and section 472a is added to read as follows:

5 Sec. 152. The director, after notice to the operator or
6 owner of an adult foster care facility may suspend, ~~deny,~~
7 revoke, or cancel a contract, agreement, or arrangement entered
8 into under section 116(3)(e) if he or she finds that there has
9 been a substantial failure to comply with the requirements as set
10 forth in the contract, agreement, or arrangement. The notice
11 shall be by certified mail or personal service, setting forth the
12 particular reasons for the proposed action and fixing a date, not
13 less than 30 days from the date of service, on which the operator
14 or owner shall be afforded a hearing before the director or his
15 or her designee. The contract, agreement, or arrangement shall
16 not be suspended, ~~denied,~~ revoked, or canceled until the direc-
17 tor notifies the operator or owner in writing of his or her find-
18 ings of fact and conclusions following such hearing.

19 Sec. 205. (1) A county community mental health agency or a
20 community mental health organization that is certified by the
21 department under section 232a may become a community mental
22 health authority as provided in this section through an enabling
23 resolution adopted by the board of commissioners of each creating
24 county after at least 3 public hearings held in accordance with
25 the open meetings act, Act No. 267 of the Public Acts of 1976,
26 being sections 15.261 to 15.275 of the Michigan Compiled Laws.
27 The resolution is considered adopted if it is approved by a

1 majority of the commissioners elected and serving in each county
2 creating the authority. The enabling resolution is not effective
3 until it has been filed with the secretary of state and with the
4 county clerk of each county creating the authority. If any pro-
5 vision of the enabling resolution conflicts with this act, this
6 act supersedes the conflicting provision.

7 (2) All of the following shall be stated in the enabling
8 resolution:

9 (a) The purpose and the power to be exercised by the commu-
10 nity mental health authority shall be to comply with and carry
11 out the provisions of this act.

12 (b) The duration of the existence of the community mental
13 health authority and the method by which the community mental
14 health authority may be dissolved or terminated by itself or by
15 the county board or boards of commissioners. These provisions
16 shall comply with section 220.

17 (c) The manner in which any net financial assets originally
18 made available to the authority by the participating county or
19 counties will be returned or distributed if the authority is dis-
20 solved or terminated. All other remaining assets net of liabili-
21 ties shall be transferred to the community mental health services
22 program or programs that replace the authority.

23 (d) The liability of the community mental health authority
24 for costs associated with real or personal property purchased or
25 leased by the county for use by the community mental health serv-
26 ices program to the extent necessary to discharge the financial
27 liability if desired by the county or counties.

1 (e) The manner of employing, compensating, transferring, or
2 discharging necessary personnel subject to the provisions of
3 applicable civil service and merit systems, and the following
4 restrictions:

5 (i) Employees of a community mental health authority are
6 public employees. A community mental health authority and its
7 employees are subject to Act No. 336 of the Public Acts of 1947,
8 being sections 423.201 to 423.217 of the Michigan Compiled Laws.

9 (ii) Upon the creation of a community mental health authori-
10 ty, the employees of the former community mental health services
11 program shall be transferred to the new authority and appointed
12 as employees subject to all rights and benefits for 1 year. Such
13 employees of the new community mental health authority shall not
14 be placed in a worse position by reason of the transfer for a
15 period of 1 year with respect to workers' compensation, pension,
16 seniority, wages, sick leave, vacation, health and welfare insur-
17 ance, or any other benefit that the employee enjoyed as an
18 employee of the former community mental health services program.
19 Employees who are transferred shall not by reason of the transfer
20 have their accrued pension benefits or credits diminished.

21 (iii) If the former county community mental health agency or
22 community mental health organization was the designated employer
23 or participated in the development of a collective bargaining
24 agreement, the newly established community mental health author-
25 ity shall assume and be bound by the existing collective bargain-
26 ing agreement. The formation of a community mental health
27 authority shall not adversely affect any existing rights and

1 obligations contained in the existing collective bargaining
2 agreement. For purposes of this provision, participation in the
3 development of a collective bargaining agreement means that a
4 representative of the community mental health agency or organiza-
5 tion actively participated in bargaining sessions with the
6 employer representative and union or was consulted with during
7 the bargaining process.

8 (f) Any other matter consistent with this act that is neces-
9 sary to assure operation of the community mental health authority
10 as agreed upon by the creating county or counties.

11 (3) If a county community mental health agency or a commu-
12 nity mental health organization becomes a community mental health
13 authority pursuant to this section, both of the following apply:

14 (a) All assets, debts, and obligations of the county commu-
15 nity mental health agency or community mental health organiza-
16 tion, including but not limited to equipment, furnishings, sup-
17 plies, cash, and other personal property, shall be transferred to
18 the community mental health authority.

19 (b) All the privileges and immunities from liability and
20 exemptions from laws, ordinances, and rules that are applicable
21 to county community mental health agencies or community mental
22 health organizations and their board members, officers, and
23 administrators, and county elected officials and employees of
24 county government are retained by the authority and the board
25 members, officers, agents, and employees of an authority created
26 under this section. ~~The privileges, immunities, and exemptions~~

1 ~~granted under this subdivision do not include the immunity~~
2 ~~granted to a county under subsection (6).~~

3 (4) In addition to other powers of a community mental health
4 services program as set forth in this act, a community mental
5 health authority has all of the following powers, whether or not
6 they are specified in the enabling resolution:

7 (a) To fix and collect charges, rates, rents, fees, or other
8 charges and to collect interest.

9 (b) To make purchases and contracts.

10 (c) To transfer, divide, or distribute assets, liabilities,
11 or contingent liabilities, unless the community mental health
12 authority is a single-county community mental health services
13 program and the county has notified the department of its inten-
14 tion to terminate participation in the community mental health
15 services program. During the interim period between notification
16 by a county under section 220 of its intent to terminate partici-
17 pation in a multi-county community mental health services program
18 and the official termination of that participation, a community
19 mental health authority's power under this subdivision is subject
20 to any agreement between the community mental health authority
21 and the county that is terminating participation, if that agree-
22 ment is consistent with the enabling resolution that created the
23 authority.

24 (d) To accept gifts, grants, or bequests and determine the
25 manner in which those gifts, grants, or bequests may be used con-
26 sistent with the donor's request.

1 (e) To acquire, own, operate, maintain, lease, or sell real
2 or personal property. Before taking official action to sell
3 residential property, however, the authority shall do all of the
4 following:

5 (i) Implement a plan for alternative housing arrangements
6 for recipients residing on the property.

7 (ii) Provide the recipients residing on the property or
8 their legal guardians, if any, an opportunity to offer their com-
9 ments and concerns regarding the sale and planned alternatives.

10 (iii) Respond to those comments and concerns in writing.

11 (f) To do the following in its own name:

12 (i) Enter into contracts and agreements.

13 (ii) Employ staff.

14 (iii) Acquire, construct, manage, maintain, or operate
15 buildings or improvements.

16 (iv) ~~Acquire~~ SUBJECT TO SUBDIVISION (E), ACQUIRE, own,
17 operate, maintain, lease, or dispose of real or personal proper-
18 ty, unless the community mental health authority is a
19 single-county mental health services program and the county has
20 notified the department of its intention to terminate participa-
21 tion in the community mental health services program. During the
22 interim period between notification by a county under section 220
23 of its intent to terminate participation in a multi-county commu-
24 nity mental health services program and the official termination
25 of that participation, a community mental health authority's
26 power under this subdivision is subject to any agreement between
27 the community mental health authority and the county that is

1 terminating participation, if that agreement is consistent with
2 the enabling resolution that created the authority.

3 (v) Incur debts, liabilities, or obligations that do not
4 constitute the debts, liabilities, or obligations of the creating
5 county or counties.

6 (vi) Commence litigation and defend itself in litigation.

7 (g) To invest funds in accordance with statutes regarding
8 investments.

9 (h) To set up reserve accounts, utilizing state funds in the
10 same proportion that state funds relate to all revenue sources,
11 to cover vested employee benefits including but not limited to
12 accrued vacation, health benefits, the employee payout portion of
13 accrued sick leave, if any, and worker's compensation. In addi-
14 tion, an authority may set up reserve accounts for depreciation
15 of capital assets and for expected future expenditures for an
16 organizational retirement plan.

17 (i) To develop a charge schedule for services provided to
18 the public and utilize the charge schedule for first and
19 third-party payers. The charge schedule may include charges that
20 are higher than costs for some service units by spreading nonrev-
21 enue service unit costs to revenue-producing service unit costs
22 with total charges not exceeding total costs. All revenue over
23 cost generated in this manner shall be utilized to provide serv-
24 ices to priority populations.

25 (5) In addition to other duties and responsibilities of a
26 community mental health services program as set forth in this

1 act, a community mental health authority shall do all of the
2 following:

3 (a) Provide to each county creating the authority and to the
4 department a copy of an annual independent audit performed by a
5 certified public accountant in accordance with governmental
6 auditing standards issued by the comptroller of the United
7 States.

8 (b) Be responsible for all executive administration, person-
9 nel administration, finance, accounting, and management informa-
10 tion system functions. The authority may discharge this respon-
11 sibility through direct staff or by contracting for services.

12 (6) A county ~~creating~~ THAT HAS CREATED a community mental
13 health authority is not liable for any intentional, negligent, or
14 grossly negligent act or omission, for any financial affairs, or
15 for any obligation of a community mental health authority, its
16 board, employees, representatives, or agents. THIS SUBSECTION
17 APPLIES ONLY TO COUNTY GOVERNMENT.

18 (7) A community mental health authority shall not levy any
19 type of tax or issue any type of bond in its own name or finan-
20 cially obligate any unit of government other than itself.

21 (8) An employee of a community mental health authority is
22 not a county employee. The community mental health authority is
23 the employer with regard to all laws pertaining to employee and
24 employer rights, benefits, and responsibilities.

25 (9) As a public governmental body, a community mental health
26 authority is subject to the open meetings act, Act No. 267 of the
27 Public Acts of 1976, being sections 15.261 to 15.275 of the

1 Michigan Compiled Laws, and the freedom of information act, Act
2 No. 442 of the Public Acts of 1976, being sections 15.231 to
3 15.246 of the Michigan Compiled Laws, except for those documents
4 produced as a part of the peer review process required in section
5 143a and made confidential by section 748(9).

6 Sec. 302. (1) Except as otherwise provided in this chapter
7 and in subsection (2), a county is financially liable for 10% of
8 the net cost of any service that is provided by the department,
9 directly or by contract, to a resident of that county.

10 (2) This section does not apply to the following:

11 (a) Family support subsidies established under section 156.

12 (b) A service provided to an individual under criminal sen-
13 tence to a state prison.

14 (C) A SERVICE PROVIDED UNDER ANY PROVISION OF A CRIMINAL
15 STATUTE.

16 SEC. 472A. (1) NOT LESS THAN 14 DAYS BEFORE THE EXPIRATION
17 OF A 1-YEAR ORDER OF CONTINUING HOSPITALIZATION MADE UNDER SEC-
18 TION 469 OR 472, IF THE HOSPITAL DIRECTOR BELIEVES THAT THE INDI-
19 VIDUAL CONTINUES TO REQUIRE TREATMENT, AND IF THE INDIVIDUAL IS
20 EXPECTED TO REFUSE TO CONTINUE TREATMENT ON A VOLUNTARY BASIS
21 WHEN THE ORDER EXPIRES, THE HOSPITAL DIRECTOR SHALL NOTIFY THE
22 EXECUTIVE DIRECTOR AND SHALL PETITION THE COURT FOR A DETERMINA-
23 TION THAT THE INDIVIDUAL CONTINUES TO BE A PERSON REQUIRING
24 TREATMENT AND FOR AN ORDER AUTHORIZING 1 OF THE FOLLOWING:

25 (A) CONTINUING HOSPITALIZATION FOR A PERIOD OF NOT MORE THAN
26 1 YEAR FROM THE DATE OF EXPIRATION OF THE PREVIOUS ORDER.

1 (B) ALTERNATIVE TREATMENT OR COMBINED HOSPITALIZATION AND
2 ALTERNATIVE TREATMENT FOR A PERIOD OF NOT MORE THAN 1 YEAR FROM
3 THE DATE OF EXPIRATION OF THE PREVIOUS ORDER.

4 (2) AN INDIVIDUAL WHO ON MARCH 28, 1996 WAS SUBJECT TO AN
5 ORDER OF CONTINUING HOSPITALIZATION FOR AN INDEFINITE PERIOD OF
6 TIME SHALL BE BROUGHT FOR HEARING NO LATER THAN THE DATE OF THE
7 SECOND 6-MONTH REVIEW UNDER SECTION 482 THAT OCCURS AFTER MARCH
8 28, 1996. IF THE COURT FINDS AT THE HEARING THAT THE INDIVIDUAL
9 CONTINUES TO REQUIRE TREATMENT, THE COURT SHALL ENTER AN ORDER
10 AUTHORIZING CONTINUING MENTAL HEALTH TREATMENT AS DESCRIBED IN
11 SUBSECTION (1).

12 Sec. 712. (1) The responsible mental health agency for each
13 recipient shall ensure that a person-centered planning process is
14 used to develop a written individual plan of services in partner-
15 ship with the recipient. The individual plan of services shall
16 be developed within 7 days of the commencement of services or, if
17 an individual is hospitalized FOR LESS THAN 7 DAYS, before dis-
18 charge or release. The individual plan of services shall consist
19 of a treatment plan, a support plan, or both, and shall establish
20 meaningful and measurable goals with the recipient. The individ-
21 ual plan of services shall include assessments of the recipient's
22 need for food, shelter, clothing, health care, employment oppor-
23 tunities where appropriate, educational opportunities where
24 appropriate, legal services, and recreation. The plan shall be
25 kept current and shall be modified when indicated. The individ-
26 ual in charge of implementing the plan of services shall be
27 designated in the plan.

1 (2) If a recipient is not satisfied with his or her
2 individual plan of services, the recipient or his or her guardian
3 or the parent of a minor recipient may make a request for review
4 to the designated individual in charge of implementing the plan.
5 The review shall be completed within 30 days and shall be carried
6 out in a manner approved by the appropriate governing body.

7 (3) An individual chosen or required by the recipient may be
8 excluded from participation in the planning process only if
9 inclusion of that individual would constitute a substantial risk
10 of physical or emotional harm to the recipient or substantial
11 disruption of the planning process. Justification for an
12 individual's exclusion shall be documented in the case record.

13 Sec. 719. (1) ~~The~~ CONSENT SHALL BE OBTAINED FROM THE
14 RECIPIENT, HIS OR HER GUARDIAN, IF ANY, OR THE PARENT OF A MINOR
15 BEFORE ANY PSYCHOTROPIC DRUGS ARE FIRST ADMINISTERED TO A
16 RECIPIENT.

17 (2) THE prescriber or, if the prescriber is not on site, the
18 individual WHO WILL BE administering ~~a~~ THE PSYCHOTROPIC drug
19 shall ~~explain to a recipient~~ DO BOTH OF THE FOLLOWING:

20 (A) EXPLAIN the specific ~~risk, if any, to the recipient of~~
21 RISKS AND the most common adverse effects that have been associ-
22 ated with ~~any psychotropic medication prescribed for the~~
23 ~~recipient.~~ THAT DRUG.

24 (B) PROVIDE THE INDIVIDUAL WITH A written summary of the
25 SPECIFIC RISKS AND most common adverse effects ~~shall be provided~~
26 ~~to the recipient by the person dispensing the~~ ASSOCIATED WITH
27 THAT drug.

1 (3) ~~(2)~~ An individual who violates this section is guilty
2 of a misdemeanor punishable by a fine of \$100.00 or imprisonment
3 for 90 days, or both.

4 (4) SUBSECTION (1) DOES NOT APPLY TO AN INDIVIDUAL WHO IS
5 SUBJECT TO AN ORDER OF INVOLUNTARY MENTAL HEALTH TREATMENT, AS
6 DEFINED IN SECTION 400.

7 Sec. 800. As used in this chapter, unless the context
8 requires otherwise:

9 (a) "Ability to pay" means the ability of a responsible
10 party to pay for the cost of services, as determined by the
11 department OR A COMMUNITY MENTAL HEALTH SERVICES PROGRAM under
12 sections 818 and 819.

13 (b) "Cost of services" means the total operating and capital
14 costs incurred by the department or a community mental health
15 services program with respect to, or on behalf of, an
16 individual. Cost of services does not include the cost of
17 research programs or expenses of state or county government unre-
18 lated to the provision of mental health services.

19 (C) "FINANCIAL LIABILITY" MEANS INSURANCE COVERAGE AND OTHER
20 BENEFITS TOGETHER WITH ABILITY TO PAY FOR THE COST OF SERVICES.

21 (D) ~~(c)~~ "Individual" means the individual, minor or adult,
22 who receives services from the department or a community mental
23 health services program or from a provider under contract with
24 the department or a community mental health services program.

25 (E) ~~(d)~~ "Inpatient services" means 24-hour care and treat-
26 ment services provided by a state facility or a licensed
27 hospital.

1 (F) ~~(e)~~ "Insurance benefits" means payments made in
2 accordance with insurance coverage for the cost of health care
3 services provided to an individual.

4 (G) ~~(f)~~ "Insurance coverage" means any policy, plan, pro-
5 gram, or fund established or maintained for the purpose of pro-
6 viding for its participants or their dependents medical, surgi-
7 cal, or hospital benefits. Insurance coverage includes, but is
8 not limited to, ~~medicaid or~~ medicare; policies, plans, pro-
9 grams, or funds maintained by nonprofit hospital service and med-
10 ical care corporations, health maintenance organizations, and
11 prudent purchaser organizations; and commercial, union, associa-
12 tion, self-funded, and administrative service policies, plans,
13 programs, and funds.

14 (H) ~~(g)~~ "Nonresidential services" means care or treatment
15 services that are not inpatient or residential services.

16 (I) ~~(h)~~ "Parents" means the legal father and mother of an
17 unmarried individual who is less than 18 years of age.

18 (J) ~~(i)~~ "Residential services" means 24-hour dependent
19 care and treatment services provided by ~~adult~~ foster care
20 facilities under contract to the department or a community mental
21 health services program or provided directly by a community
22 mental health services program.

23 (K) ~~(j)~~ "Responsible party" means a person who is
24 ~~financially liable~~ LEGALLY OBLIGATED TO PAY for services fur-
25 nished to the individual. Responsible party includes the indi-
26 vidual and, as applicable, the individual's spouse and THE parent
27 or parents of a minor.

1 Sec. 804. (1) A responsible party is ~~financially liable~~
 2 OBLIGATED TO PAY for the cost of services provided to the indi-
 3 vidual directly by or ~~by~~ UNDER contract with the department or
 4 a community mental health services program, TO THE EXTENT OF THE
 5 RESPONSIBLE PARTY'S INSURANCE BENEFITS AND ABILITY TO PAY.

6 (2) The department or a community mental health services
 7 program shall charge responsible parties for that portion of the
 8 financial liability that is not met by insurance ~~coverage~~
 9 BENEFITS. Subject to section 814, the amount of the charge shall
 10 be whichever of the following is the least amount:

11 (a) Ability to pay determined under section 818 or 819.

12 (b) Cost of services as defined in section 800.

13 (c) The amount of coinsurance and deductible in accordance
 14 with the terms of participation with a payer or payer group.

15 (3) The department or community mental health services pro-
 16 gram shall waive payment of that part of a charge determined
 17 under subsection (2) that exceeds ~~financial liability.~~ The
 18 ~~department or community mental health services program shall not~~
 19 ~~impose charges in excess of~~ THE RESPONSIBLE PARTY'S ability to
 20 pay.

21 (4) Subject to section 114a, the department may promulgate
 22 rules to establish therapeutic nominal charges for certain
 23 services. The charges shall not exceed \$3.00 and shall be autho-
 24 rized in the ~~recipient's individual~~ INDIVIDUAL'S plan of
 25 services.

26 Sec. 806. (1) If the individual is single, ~~insurance~~
 27 ~~coverage and ability to pay~~ FINANCIAL LIABILITY shall first be

1 determined for the individual. If the individual is an unmarried
2 minor and the individual's insurance ~~coverage~~ BENEFITS and
3 ability to pay are less than the cost of the services, ~~insurance~~
4 ~~coverage and ability to pay~~ FINANCIAL LIABILITY shall be deter-
5 mined for the parents.

6 (2) If the individual is married, ~~insurance coverage and~~
7 ~~ability to pay~~ FINANCIAL LIABILITY shall be determined jointly
8 for the individual and the spouse.

9 Sec. 812. (1) If an individual is covered, in part or in
10 whole, under any type of insurance coverage, private or public,
11 for services provided directly by or by contract with the depart-
12 ment or a community mental health services program, the benefits
13 from that insurance coverage are considered to be available to
14 ~~pay~~ MEET the individual's ~~financial liability~~ OBLIGATION TO
15 PAY FOR THE COST OF SERVICES, notwithstanding that the insurance
16 contract was entered into by a person other than the individual
17 or notwithstanding that the insurance coverage was paid for by a
18 person other than the individual.

19 (2) Insurance ~~coverage is~~ BENEFITS ARE considered avail-
20 able to ~~pay for~~ MEET the individual's ~~financial liability~~
21 OBLIGATION TO PAY for services provided by the department or a
22 community mental health services program or its contractee in the
23 amount and to the same extent that ~~coverage~~ BENEFITS would be
24 available to cover the cost of services if the individual had
25 received the services from a health care provider other than the
26 department or a community mental health services program or its
27 contractee.

1 Sec. 817. (1) For an individual who receives inpatient or
2 residential services on a voluntary or involuntary basis, the
3 department or community mental health services program shall
4 determine the responsible parties' ~~insurance coverage and abil-~~
5 ~~ity to pay~~ FINANCIAL LIABILITY as soon as practical after the
6 individual is admitted.

7 (2) For an individual who receives nonresidential services,
8 the department or community mental health services program shall
9 determine the responsible parties' ~~insurance coverage and abil-~~
10 ~~ity to pay~~ FINANCIAL LIABILITY before, or as soon as practical
11 after, the start of services.

12 Sec. 828. The department or community mental health serv-
13 ices program shall annually determine the ~~insurance coverage and~~
14 ~~ability to pay~~ FINANCIAL LIABILITY of each individual who con-
15 tinues to receive services and of each additional responsible
16 party, if applicable. The department or community mental health
17 services program shall also complete a new determination of
18 ~~insurance coverage and ability to pay~~ FINANCIAL LIABILITY if
19 informed of a significant change in a responsible party's
20 ~~ability to pay~~ TOTAL FINANCIAL CIRCUMSTANCES.