

REPRINT
HOUSE SUBSTITUTE FOR
SENATE BILL NO. 1225

(As passed the House, December 10, 1998)

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 100a, 161, and 748 (MCL 330.1100a, 330.1161,
and 330.1748), section 100a as added and section 161 as amended
by 1995 PA 290 and section 748 as amended by 1996 PA 588, and to
add section 748a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 100a. (1) "Abilities" means the qualities, skills, and
2 competencies of an individual that reflect the individual's tal-
3 ents and acquired proficiencies.

4 (2) "Abuse" means nonaccidental physical or emotional harm
5 to a recipient, or sexual contact with or sexual penetration of a
6 recipient as those terms are defined in section 520a of the
7 Michigan penal code, ~~Act No. 328 of the Public Acts of 1931,~~
8 ~~being section 750.520a of the Michigan Compiled Laws~~ 1931

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1 PA 328, MCL 750.520A, that is committed by an employee or
2 volunteer of the department, a community mental health services
3 program, or a licensed hospital or BY an employee or volunteer of
4 a service provider under contract with the department, community
5 mental health services program, or licensed hospital.

6 (3) "Adaptive skills" means skills in 1 or more of the fol-
7 lowing areas:

8 (a) Communication.

9 (b) Self-care.

10 (c) Home living.

11 (d) Social skills.

12 (e) Community use.

13 (f) Self-direction.

14 (g) Health and safety.

15 (h) Functional academics.

16 (i) Leisure.

17 (j) Work.

18 (4) "Adult foster care facility" means an adult foster care
19 facility licensed under the adult foster care facility licensing
20 act, ~~Act No. 218 of the Public Acts of 1979, being sections~~
21 ~~400.701 to 400.737 of the Michigan Compiled Laws~~ 1979 PA 218,
22 MCL 400.701 TO 400.737.

23 (5) "Applicant" means an individual or his or her legal rep-
24 resentative who makes a request for mental health services.

25 (6) "Board" means the governing body of a community mental
26 health services program.

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1 (7) "Board of commissioners" means a county board of
2 commissioners.

3 (8) "Center" means a facility operated by the department to
4 admit individuals with developmental disabilities and provide
5 habilitation and treatment services.

6 (9) "Certification" means formal approval of a program by
7 the department in accordance with standards developed or approved
8 by the department.

9 (10) "CHILD ABUSE" AND "CHILD NEGLECT" MEAN THOSE TERMS AS
10 DEFINED IN SECTION 2 OF THE CHILD PROTECTION LAW, 1975 PA 238,
11 MCL 722.622.

12 (11) ~~(10)~~ "Child and adolescent psychiatrist" means 1 or
13 more of the following:

14 (a) A physician who has completed a residency program in
15 child and adolescent psychiatry approved by the accreditation
16 council for graduate medical education or the American osteo-
17 pathic association, or who has completed 12 months of child and
18 adolescent psychiatric rotation and is enrolled in an approved
19 residency program as described in this subsection.

20 (b) A psychiatrist employed by or under contract as a child
21 and adolescent psychiatrist with the department or a community
22 mental health services program on ~~the effective date of the~~
23 ~~amendatory act that added this subdivision~~ MARCH 28, 1996, who
24 has education and clinical experience in the evaluation and
25 treatment of children or adolescents with serious emotional
26 disturbance.

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1 (c) A psychiatrist who has education and clinical experience
2 in the evaluation and treatment of children or adolescents with
3 serious emotional disturbance who is approved by the director.

4 (12) ~~(11)~~ "Children's diagnostic and treatment service"
5 means a program operated by or under contract with a community
6 mental health services program, ~~which~~ THAT provides examina-
7 tion, evaluation, and referrals for minors, including emergency
8 referrals, ~~which~~ THAT provides or facilitates treatment for
9 minors, and ~~which~~ THAT has been certified by the department.

10 (13) ~~(12)~~ "Community mental health authority" means a sep-
11 arate legal public governmental entity created under section 205
12 to operate as a community mental health services program.

13 (14) ~~(13)~~ "Community mental health organization" means a
14 community mental health services program that is organized under
15 the urban cooperation act of 1967, ~~Act No. 7 of the Public Acts~~
16 ~~of the Extra Session of 1967, being sections 124.501 to 124.512~~
17 ~~of the Michigan Compiled Laws~~ 1967 (EX SESS) PA 7, MCL 124.501
18 TO 124.512.

19 (15) ~~(14)~~ "Community mental health services program" means
20 a program operated under chapter 2 as a county community mental
21 health agency, a community mental health authority, or a commu-
22 nity mental health organization.

23 (16) ~~(15)~~ "Consent" means a written agreement executed by
24 a recipient, a minor recipient's parent, or a recipient's legal
25 representative with authority to execute a consent, or a verbal
26 agreement of a recipient that is witnessed and documented by an
27 individual other than the individual providing treatment.

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1 (17) ~~(16)~~ "County community mental health agency" means an
2 official county or multicounty agency created under section 210
3 that operates as a community mental health services program and
4 that has not elected to become a community mental health author-
5 ity under section 205 or a community mental health organization
6 under ~~Act No. 7 of the Public Acts of the Extra Session of 1967~~
7 THE URBAN COOPERATION ACT OF 1967, 1967 (EX SESS) PA 7,
8 MCL 124.501 TO 124.512.

9 (18) ~~(17)~~ "Dependent living setting" means all of the
10 following:

11 (a) An adult foster care facility.

12 (b) A nursing home licensed under article 17 of the public
13 health code, ~~Act No. 368 of the Public Acts of 1978, being sec-~~
14 ~~tions 333.20101 to 333.22260 of the Michigan Compiled Laws~~ 1978
15 PA 368, MCL 333.20101 TO 333.22260.

16 (c) A home for the aged licensed under article 17 of ~~Act~~
17 ~~No. 368 of the Public Acts of 1978~~ THE PUBLIC HEALTH CODE, 1978
18 PA 368, MCL 333.20101 TO 333.22260.

19 (19) ~~(18)~~ "Department" means the department of ~~mental~~
20 COMMUNITY health.

21 (20) ~~(19)~~ "Developmental disability" means either of the
22 following:

23 (a) If applied to an individual older than 5 years, a
24 severe, chronic condition that meets all of the following
25 requirements:

26 (i) Is attributable to a mental or physical impairment or a
27 combination of mental and physical impairments.

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- 1 (ii) Is manifested before the individual is 22 years old.
- 2 (iii) Is likely to continue indefinitely.
- 3 (iv) Results in substantial functional limitations in 3 or
- 4 more of the following areas of major life activity:
- 5 (A) Self-care.
- 6 (B) Receptive and expressive language.
- 7 (C) Learning.
- 8 (D) Mobility.
- 9 (E) Self-direction.
- 10 (F) Capacity for independent living.
- 11 (G) Economic self-sufficiency.
- 12 (v) Reflects the individual's need for a combination and
- 13 sequence of special, interdisciplinary, or generic care, treat-
- 14 ment, or other services that are of lifelong or extended duration
- 15 and are individually planned and coordinated.
- 16 (b) If applied to a minor from birth to age 5, a substantial
- 17 developmental delay or a specific congenital or acquired condi-
- 18 tion with a high probability of resulting in developmental dis-
- 19 ability as defined in subdivision (a) if services are not
- 20 provided.
- 21 (21) ~~-(20)-~~ "Director" means the director of the department
- 22 ~~of mental health~~ or his or her designee.
- 23 (22) ~~-(21)-~~ "Discharge" means an absolute, unconditional
- 24 release of an individual from a facility by action of the facil-
- 25 ity or a court.
- 26 (23) ~~-(22)-~~ "Eligible minor" means an individual less than
- 27 18 years of age who is recommended in the written report of a

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1 multidisciplinary team under rules promulgated by the department
2 of education to be classified as 1 of the following:

3 (a) Severely mentally impaired.

4 (b) Severely multiply impaired.

5 (c) Autistic impaired and receiving special education serv-
6 ices in a program designed for the autistic impaired under sub-
7 section (1) of R 340.1758 of the Michigan administrative code or
8 in a program designed for the severely mentally impaired or
9 severely multiply impaired.

10 (24) ~~(23)~~ "Emergency situation" means a situation in which
11 an individual is experiencing a serious mental illness or a
12 developmental disability, or a child is experiencing a serious
13 emotional disturbance, and 1 of the following applies:

14 (a) The individual can reasonably be expected within the
15 near future to physically injure himself, herself, or another
16 individual, either intentionally or unintentionally.

17 (b) The individual is unable to provide himself or herself
18 food, clothing, or shelter or to attend to basic physical activi-
19 ties such as eating, toileting, bathing, grooming, dressing, or
20 ambulating, and this inability may lead in the near future to
21 harm to the individual or to another individual.

22 (c) The individual's judgment is so impaired that he or she
23 is unable to understand the need for treatment and, in the opin-
24 ion of the mental health professional, his or her continued
25 behavior as a result of the mental illness, developmental dis-
26 ability, or emotional disturbance can reasonably be expected in

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1 the near future to result in physical harm to the individual or
2 to another individual.

3 (25) ~~-(24)-~~ "Executive director" means an individual
4 appointed under section 226 to direct a community mental health
5 services program or his or her designee.

6 Sec. 161. ~~The department, in~~ IN conjunction with commu-
7 nity mental health services programs, THE DEPARTMENT shall con-
8 duct annually and forward to the governor and the house and
9 senate appropriations committees, and the senate and house com-
10 mittees with legislative oversight of social services and mental
11 health, an evaluation of the family support subsidy program that
12 shall include, but IS not ~~be~~ limited to, all of the following:

13 (a) The impact of the family support subsidy program upon
14 children covered by this act in facilities and residential care
15 programs including, to the extent possible, sample case reviews
16 of families who choose not to participate.

17 (b) Case reviews of families who voluntarily terminate par-
18 ticipation in the family support subsidy program for any reason,
19 particularly when the eligible minor is placed out of the family
20 home, including the involvement of the department and community
21 mental health services programs in offering suitable
22 alternatives.

23 (c) Sample assessments of families receiving family support
24 subsidy payments including adequacy of subsidy and need for serv-
25 ices not available.

26 (d) The efforts to encourage program participation of
27 eligible families.

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1 (e) The geographic distribution of families receiving
2 subsidy payments and, to the extent possible, eligible minors
3 presumed to be eligible for family support subsidy payments.

4 (f) Programmatic and legislative recommendations to further
5 assist families in providing care for eligible minors.

6 (g) Problems that arise in identifying eligible minors
7 through diagnostic evaluations performed under rules promulgated
8 by the department of education.

9 (h) The number of beds reduced in state facilities and
10 foster care facilities serving severely mentally, multiply, and
11 autistic impaired children when the children return home to their
12 natural families as a result of the subsidy program.

13 (i) Caseload figures by eligibility category as defined in
14 section ~~100a(22)~~ 100A(23).

15 Sec. 748. (1) Information in the record of a recipient, and
16 other information acquired in the course of providing mental
17 health services to a recipient, shall be kept confidential and
18 shall not be open to public inspection. The information may be
19 disclosed outside the department, community mental health serv-
20 ices program, licensed facility, or contract provider, whichever
21 is the holder of the record, only in the circumstances and under
22 the conditions set forth in this section OR SECTION 748A.

23 (2) If information made confidential by this section is dis-
24 closed, the identity of the individual to whom it pertains shall
25 be protected and shall not be disclosed unless it is germane to
26 the authorized purpose for which disclosure was sought; and, when
27 practicable, no other information shall be disclosed unless it is

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1 germane to the authorized purpose for which disclosure was
2 sought.

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

7 (4) For case record entries made subsequent to March 28,
8 1996, information made confidential by this section shall be dis-
9 closed to an adult recipient, upon the recipient's request, if
10 the recipient does not have a guardian and has not been adjudi-
11 cated legally incompetent. The holder of the record shall comply
12 with the adult recipient's request for disclosure as expedi-
13 tiously as possible but in no event later than the earlier of 30
14 days after receipt of the request or, if the recipient is receiv-
15 ing treatment from the holder of the record, before the recipient
16 is released from treatment.

17 (5) Except as otherwise provided in ~~subsection (4), (6),~~
18 ~~(7), or (9)~~ THIS SECTION OR SECTION 748A, when requested, infor-
19 mation made confidential by this section shall be disclosed only
20 under 1 or more of the following circumstances:

21 (a) Pursuant to ~~orders~~ AN ORDER or ~~subpoenas~~ A SUBPOENA
22 of a court of record ~~,~~ or ~~subpoenas~~ A SUBPOENA of the legis-
23 lature, unless the information is ~~made~~ 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.

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

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

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

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

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

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

25 (a) ~~Providers~~ A PROVIDER of mental health services to the
26 recipient.

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1 (b) The recipient or his or her guardian or the parent of a
2 minor recipient or ~~any other~~ ANOTHER individual or agency
3 unless in the written judgment of the holder the disclosure would
4 be detrimental to the recipient or others.

5 (7) Information may be disclosed in the discretion of the
6 holder of the record UNDER 1 OR MORE OF THE FOLLOWING
7 CIRCUMSTANCES:

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

10 (b) As necessary for the purpose of outside research, evalu-
11 ation, accreditation, or statistical compilation. ~~, provided~~
12 ~~that the~~ THE individual who is the subject of the information
13 ~~can~~ SHALL NOT be identified ~~from~~ IN the disclosed information
14 ~~only if such~~ UNLESS THE identification is essential in order to
15 achieve the purpose for which the information is sought or if
16 preventing ~~such~~ THE identification would clearly be impracti-
17 cal, but ~~in no event~~ NOT if the subject of the information is
18 likely to be harmed by the identification.

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

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

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

5 (b) A recipient, including a recipient who has died or whose
6 ~~whereabouts are~~ LOCATION IS unknown, if all of the following
7 apply:

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

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

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

16 (c) A recipient who has a guardian or other legal represen-
17 tative if all of the following apply:

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

21 (ii) Upon receipt of the name and address of the recipient's
22 legal representative, the protection and advocacy system has con-
23 tacted the representative and offered assistance in resolving the
24 situation.

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

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1 (9) The records, data, and knowledge collected for or by
2 individuals or committees assigned a peer review function,
3 including the review function under section 143a(1), are confi-
4 dential, shall be used only for the purposes of peer review, are
5 not public records, and are not subject to court subpoena. This
6 subsection does not prevent disclosure of individual case records
7 pursuant to this section.

8 (10) The holder of an individual's record, ~~when~~ IF autho-
9 rized to release information for clinical purposes by the indi-
10 vidual or the individual's guardian or a parent of a minor, shall
11 release a copy of the entire medical and clinical record to the
12 provider of mental health services.

13 SEC. 748A. (1) IF THERE IS A COMPELLING NEED FOR MENTAL
14 HEALTH RECORDS OR INFORMATION TO DETERMINE WHETHER CHILD ABUSE OR
15 CHILD NEGLECT HAS OCCURRED OR TO TAKE ACTION TO PROTECT A MINOR
16 WHERE THERE MAY BE A SUBSTANTIAL RISK OF HARM, A FAMILY INDEPEN-
17 DENCE AGENCY CASEWORKER OR ADMINISTRATOR DIRECTLY INVOLVED IN THE
18 CHILD ABUSE OR NEGLECT INVESTIGATION SHALL NOTIFY A MENTAL HEALTH
19 PROFESSIONAL THAT A CHILD ABUSE OR NEGLECT INVESTIGATION HAS BEEN
20 INITIATED INVOLVING A PERSON WHO HAS RECEIVED SERVICES FROM THE
21 MENTAL HEALTH PROFESSIONAL AND SHALL REQUEST IN WRITING MENTAL
22 HEALTH RECORDS AND INFORMATION THAT ARE PERTINENT TO THAT
23 INVESTIGATION. UPON RECEIPT OF THIS NOTIFICATION AND REQUEST,
24 THE MENTAL HEALTH PROFESSIONAL SHALL REVIEW ALL MENTAL HEALTH
25 RECORDS AND INFORMATION IN THE MENTAL HEALTH PROFESSIONAL'S POS-
26 SESSION TO DETERMINE IF THERE ARE MENTAL HEALTH RECORDS OR
27 INFORMATION THAT IS PERTINENT TO THAT INVESTIGATION. WITHIN 14

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1 DAYS AFTER RECEIPT OF A REQUEST MADE UNDER THIS SUBSECTION, THE
2 MENTAL HEALTH PROFESSIONAL SHALL RELEASE THOSE PERTINENT MENTAL
3 HEALTH RECORDS AND INFORMATION TO THE CASEWORKER OR ADMINISTRATOR
4 DIRECTLY INVOLVED IN THE CHILD ABUSE OR NEGLECT INVESTIGATION.

5 (2) THE FOLLOWING PRIVILEGES DO NOT APPLY TO MENTAL HEALTH
6 RECORDS OR INFORMATION TO WHICH ACCESS IS GIVEN UNDER THIS
7 SECTION:

8 (A) THE PHYSICIAN-PATIENT PRIVILEGE CREATED IN SECTION 2157
9 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236,
10 MCL 600.2157.

11 (B) THE DENTIST-PATIENT PRIVILEGE CREATED IN SECTION 16648
12 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.16648.

13 (C) THE LICENSED PROFESSIONAL COUNSELOR-CLIENT AND LIMITED
14 LICENSED COUNSELOR-CLIENT PRIVILEGE CREATED IN SECTION 18117 OF
15 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.18117.

16 (D) THE PSYCHOLOGIST-PATIENT PRIVILEGE CREATED IN SECTION
17 18237 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.18237.

18 (E) ANY OTHER HEALTH PROFESSIONAL-PATIENT PRIVILEGE CREATED
19 OR RECOGNIZED BY LAW.

20 (3) TO THE EXTENT NOT PROTECTED BY THE IMMUNITY CONFERRED BY
21 1964 PA 170, MCL 691.1401 TO 691.1415, AN INDIVIDUAL WHO IN GOOD
22 FAITH GIVES ACCESS TO MENTAL HEALTH RECORDS OR INFORMATION UNDER
23 THIS SECTION IS IMMUNE FROM CIVIL OR ADMINISTRATIVE LIABILITY
24 ARISING FROM THAT CONDUCT, UNLESS THE CONDUCT WAS GROSS NEGLI-
25 GENCE OR WILLFUL AND WANTON MISCONDUCT.

26 (4) A DUTY UNDER THIS ACT RELATING TO CHILD ABUSE AND
27 NEGLECT DOES NOT ALTER A DUTY IMPOSED UNDER ANOTHER STATUTE,

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1 INCLUDING THE CHILD PROTECTION LAW, 1975 PA 238, MCL 722.621 TO
2 722.638, REGARDING THE REPORTING OR INVESTIGATION OF CHILD ABUSE
3 OR NEGLECT.

4 Enacting section 1. This amendatory act takes effect March
5 1, 1999.