

**SENATE BILL NO. 1225**

June 25, 1998, Introduced by Senator CISKY and referred to the Committee on Families, Mental Health and Human Services.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 748 (MCL 330.1748), as amended by 1996 PA  
588.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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

9       (2) If information made confidential by this section is  
10 disclosed, the identity of the individual to whom it pertains

1 shall be protected and shall not be disclosed unless it is  
 2 germane to the authorized purpose for which disclosure was  
 3 sought; and, when practicable, no other information shall be dis-  
 4 closed unless it is germane to the authorized purpose for which  
 5 disclosure was sought.

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

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

20 (5) Except as otherwise provided in ~~subsection (4), (6),~~  
 21 ~~(7), or (9)~~ THIS SECTION, when requested, information made con-  
 22 fidential by this section shall be disclosed only under 1 or more  
 23 of the following circumstances:

24 (a) Pursuant to ~~orders~~ AN ORDER or ~~subpoenas~~ A SUBPOENA  
 25 of a court of record ~~,~~ or ~~subpoenas~~ A SUBPOENA of the legis-  
 26 lature, unless the information is ~~made~~ privileged by law.

1 (b) To a prosecuting attorney as necessary for the  
2 prosecuting attorney to participate in a proceeding governed by  
3 this act.

4 (c) To an attorney for the recipient, with the consent of  
5 the recipient, the recipient's guardian with authority to con-  
6 sent, or the parent with legal and physical custody of a minor  
7 recipient.

8 (d) If necessary in order to comply with another provision  
9 of law.

10 (e) To the department if the information is necessary in  
11 order for the department to discharge a responsibility placed  
12 upon it by law.

13 (f) To the office of the auditor general if the information  
14 is necessary for that office to discharge its constitutional  
15 responsibility.

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

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

1       (a) ~~Providers~~ A PROVIDER of mental health services to the  
2 recipient.

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

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

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

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

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

25      (8) If required by federal law, the department or a commu-  
26 nity mental health services program or licensed facility shall  
27 grant a representative of the protection and advocacy system

1 designated by the governor in compliance with section 931 access  
2 to the records of all of the following:

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

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

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

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

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

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

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

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

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

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

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

15       (11) IF THERE IS A COMPELLING NEED FOR RECORDS TO DETERMINE  
16 WHETHER CHILD ABUSE OR NEGLECT HAS OCCURRED OR TO TAKE ACTION TO  
17 PROTECT A CHILD WHERE THERE MAY BE A SUBSTANTIAL RISK OF HARM,  
18 THE DEPARTMENT AND EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM  
19 SHALL GIVE ACCESS TO A FAMILY INDEPENDENCE AGENCY EMPLOYEE  
20 DIRECTLY INVOLVED IN THE INVESTIGATION TO DIAGNOSTIC AND TREAT-  
21 MENT RECORDS PERTAINING TO A CHILD WHO IS A SUBJECT OF A CHILD  
22 ABUSE OR NEGLECT INVESTIGATION OR PERTAINING TO AN INDIVIDUAL  
23 SUSPECTED AS A PERPETRATOR IN THE INVESTIGATION. A RECORD DIS-  
24 CLOSED UNDER THIS SECTION SHALL INCLUDE THE IDENTITY OF THE INDI-  
25 VIDUAL TO WHOM THE RECORD OR INFORMATION PERTAINS.

26       (12) IF THERE IS A COMPELLING NEED FOR RECORDS OR  
27 INFORMATION TO DETERMINE WHETHER CHILD ABUSE OR NEGLECT HAS

1 OCCURRED OR TO TAKE ACTION TO PROTECT A CHILD WHERE THERE MAY BE  
2 A SUBSTANTIAL RISK OF HARM, A LICENSED MENTAL HEALTH PROFESSIONAL  
3 WHO HAS PROVIDED MENTAL HEALTH SERVICES TO A MINOR WHO IS THE  
4 SUBJECT OF AN INVESTIGATION UNDER THE CHILD PROTECTION LAW, 1975  
5 PA 238, MCL 722.621 TO 722.638, SHALL GIVE ACCESS TO RECORDS AND  
6 INFORMATION IN THE MINOR'S MENTAL HEALTH SERVICES RECORD TO A  
7 FAMILY INDEPENDENCE AGENCY EMPLOYEE DIRECTLY INVOLVED IN THE  
8 INVESTIGATION.

9 (13) A DEPARTMENT EMPLOYEE SHALL NOT BE GIVEN THE ACCESS  
10 DESCRIBED BY SUBSECTION (11) OR (12) UNLESS THE DEPARTMENT  
11 EMPLOYEE REQUESTS THE RECORDS AND INFORMATION IN WRITING. WITHIN  
12 14 CALENDAR DAYS AFTER THE RECORD HOLDER RECEIVES THE WRITTEN  
13 REQUEST, THE DEPARTMENT, COMMUNITY MENTAL HEALTH SERVICES PRO-  
14 GRAM, OR LICENSED MENTAL HEALTH PROFESSIONAL SHALL GIVE THAT  
15 ACCESS REGARDLESS OF THE CONSENT OF THE PERSON FROM WHOM CONSENT  
16 WOULD OTHERWISE BE REQUIRED.

17 (14) THE FOLLOWING PRIVILEGES DO NOT APPLY TO INFORMATION  
18 RELEASED OR MADE AVAILABLE UNDER SUBSECTION (12):

19 (A) THE PHYSICIAN-PATIENT PRIVILEGE CREATED IN SECTION 2157  
20 OF THE REVISED JUDICATURE ACT OF 1961, 1961 PA 236, MCL  
21 600.2157.

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

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

1 (D) THE PSYCHOLOGIST-PATIENT PRIVILEGE CREATED IN SECTION  
2 18237 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.18237.

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

5 (15) TO THE EXTENT NOT PROTECTED BY THE IMMUNITY CONFERRED  
6 BY 1964 PA 170, MCL 691.1401 TO 691.1415, AN INDIVIDUAL WHO IN  
7 GOOD FAITH GIVES ACCESS TO A RECORD AS REQUIRED BY THIS SECTION  
8 IS IMMUNE FROM CIVIL OR ADMINISTRATIVE LIABILITY ARISING FROM  
9 THAT CONDUCT, UNLESS THE CONDUCT WAS GROSS NEGLIGENCE OR WILLFUL  
10 AND WANTON MISCONDUCT.