

Act No. 343
Public Acts of 2002
Approved by the Governor
May 23, 2002
Filed with the Secretary of State
May 23, 2002
EFFECTIVE DATE: May 23, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Rep. Caul

ENROLLED HOUSE BILL No. 5849

AN ACT to amend 1974 PA 258, entitled "An act to codify, revise, consolidate, and classify the laws relating to mental health; to prescribe the powers and duties of certain state and local agencies and officials and certain private agencies and individuals; to regulate certain agencies and facilities providing mental health services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness or developmental disabilities; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness or developmental disability who are in the criminal justice system; to provide for penalties and remedies; and to repeal acts and parts of acts," by amending section 205 (MCL 330.1205), as amended by 2000 PA 228.

The People of the State of Michigan enact:

Sec. 205. (1) A county community mental health agency or a community mental health organization that is certified by the department under section 232a may become a community mental health authority as provided in this section through an enabling resolution adopted by the board of commissioners of each creating county after at least 3 public hearings held in accordance with the open meetings act, 1976 PA 267, MCL 15.261 to 15.275. The resolution is considered adopted if it is approved by a majority of the commissioners elected and serving in each county creating the authority. The enabling resolution is not effective until it has been filed with the secretary of state and with the county clerk of each county creating the authority. If any provision of the enabling resolution conflicts with this act, this act supersedes the conflicting provision.

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

(a) The purpose and the power to be exercised by the community mental health authority shall be to comply with and carry out the provisions of this act.

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

(c) The manner in which any net financial assets originally made available to the authority by the participating county or counties will be returned or distributed if the authority is dissolved or terminated. All other remaining assets, net of liabilities, shall be transferred to the community mental health services program or programs that replace the authority.

(d) The liability of the community mental health authority for costs associated with real or personal property purchased or leased by the county for use by the community mental health services program to the extent necessary to discharge the financial liability if desired by the county or counties.

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

(i) Employees of a community mental health authority are public employees. A community mental health authority and its employees are subject to 1947 PA 336, MCL 423.201 to 423.217.

(ii) Upon the creation of a community mental health authority, the employees of the former community mental health services program shall be transferred to the new authority and appointed as employees subject to all rights and benefits for 1 year. Such employees of the new community mental health authority shall not be placed in a worse position by reason of the transfer for a period of 1 year with respect to workers' compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other benefit that the employee enjoyed as an employee of the former community mental health services program. Employees who are transferred shall not by reason of the transfer have their accrued pension benefits or credits diminished.

(iii) If the former county community mental health agency or community mental health organization was the designated employer or participated in the development of a collective bargaining agreement, the newly established community mental health authority shall assume and be bound by the existing collective bargaining agreement. The formation of a community mental health authority shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement. For purposes of this provision, participation in the development of a collective bargaining agreement means that a representative of the community mental health agency or organization actively participated in bargaining sessions with the employer representative and union or was consulted with during the bargaining process.

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

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

(a) All assets, debts, and obligations of the county community mental health agency or community mental health organization, including, but not limited to, equipment, furnishings, supplies, cash, and other personal property, shall be transferred to the community mental health authority.

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

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

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

(b) To make purchases and contracts.

(c) To transfer, divide, or distribute assets, liabilities, or contingent liabilities, unless the community mental health authority is a single-county community mental health services program and the county has notified the department of its intention to terminate participation in the community mental health services program. During the interim period between notification by a county under section 220 of its intent to terminate participation in a multi-county community mental health services program and the official termination of that participation, a community mental health authority's power under this subdivision is subject to any agreement between the community mental health authority and the county that is terminating participation, if that agreement is consistent with the enabling resolution that created the authority.

(d) To accept gifts, grants, or bequests and determine the manner in which those gifts, grants, or bequests may be used consistent with the donor's request.

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

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

(ii) Provide the recipients residing on the property or their legal guardians, if any, an opportunity to offer their comments and concerns regarding the sale and planned alternatives.

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

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

(i) Enter into contracts and agreements.

(ii) Employ staff.

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

(iv) Subject to subdivision (e), acquire, own, operate, maintain, lease, or dispose of real or personal property, unless the community mental health authority is a single-county mental health services program and the county has notified

the department of its intention to terminate participation in the community mental health services program. During the interim period between notification by a county under section 220 of its intent to terminate participation in a multi-county community mental health services program and the official termination of that participation, a community mental health authority's power under this subdivision is subject to any agreement between the community mental health authority and the county that is terminating participation, if that agreement is consistent with the enabling resolution that created the authority.

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

(vi) Commence litigation and defend itself in litigation.

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

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

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

(5) In addition to other duties and responsibilities of a community mental health services program as set forth in this act, a community mental health authority shall do all of the following:

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

(b) Be responsible for all executive administration, personnel administration, finance, accounting, and management information system functions. The authority may discharge this responsibility through direct staff or by contracting for services.

(6) A county that has created a community mental health authority is not liable for any intentional, negligent, or grossly negligent act or omission, for any financial affairs, or for any obligation of a community mental health authority, its board, employees, representatives, or agents. This subsection applies only to county government.

(7) A community mental health authority shall not levy any type of tax or, except as provided in subsection (13), issue any type of bond in its own name or financially obligate any unit of government other than itself.

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

(9) As a public governmental body, a community mental health authority is subject to the open meetings act, 1976 PA 267, MCL 15.261 to 15.275, and the freedom of information act, 1976 PA 442, MCL 15.231 to 15.246, except for those documents produced as a part of the peer review process required in section 143a and made confidential by section 748(9).

(10) A community mental health authority may borrow money to finance or refinance the purchase of real property or tangible personal property of the authority. These contractual obligations shall be secured by a mortgage on the real property or a security interest or other lien on the tangible personal property. These contractual obligations shall be for not longer than the useful life of the collateral and shall be authorized by resolution approved by a majority of the community mental health board. A mortgage given by a community mental health authority to finance the purchase of real property under this subsection is not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

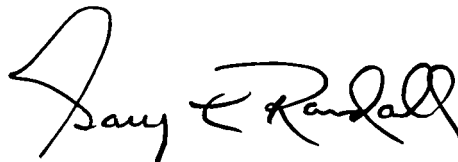
(11) A community mental health authority may enter into an installment purchase agreement for the purchase or refinancing of tangible personal property for public purposes. The installment purchase agreement for the purchase of tangible personal property shall not be for a longer term than the useful life of the tangible personal property. The installment purchase agreements described in this subsection are not subject to the provisions of the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821. The total of all outstanding installment purchase agreements under this subsection shall not exceed 1% of the taxable value of all property located within the area served by that community mental health authority.

(12) If a community mental health authority has financed the purchase of property in a substantially similar manner to that as described in subsection (10) or (11), prior to the effective date of the amendatory act that added this subsection, that purchase is ratified as if it was made under subsection (10) or (11).

(13) A community mental health authority may borrow money and issue notes by resolution of a majority vote of its governing board, which notes shall not exceed 20% of the previous year's annual income and shall mature not more than 18 months from the date of their issuance. Notes shall be issued for the purpose of meeting the expenses of the

community mental health authority, including the expenses of operation and maintenance of its facilities, and payments due to its contracted service providers. The resolution authorizing the issuance of the notes shall provide for the pledge of income and revenues of the community mental health authority for the payment of the notes, and may also provide for a special sinking fund into which there may be paid, as collected, a sufficient fund from the revenues of the community mental health authority to retire both the principal of and interest on the notes at or before maturity. The resolution may also authorize 1 or more officers or board members of the authority to provide for the mortgage, pledge, or grant of security interests or other liens in other assets of the community mental health authority as additional security for the payment of notes. Notes issued by a community mental health authority under this subsection are not subject to the revised municipal finance act, 2001 PA 34, MCL 141.2101 to 141.2821.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives.



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Secretary of the Senate.

Approved

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Governor.