

HOUSE BILL No. 6071

May 7, 2008, Introduced by Reps. Miller, Kathleen Law, Amos, Meisner, Simpson, Leland, Robert Jones, Vagnozzi, Jackson, Young, Byrnes, Rick Jones, Green, Polidori, Gonzales, Garfield, Wenke, Meadows, Alma Smith and Clack and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 755, 780, 784, and 786 (MCL 330.1755,
330.1780, 330.1784, and 330.1786), as added by 1995 PA 290.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 755. (1) Each community mental health services program
2 and each licensed hospital shall establish an office of recipient
3 rights subordinate only to the executive director or hospital
4 director.

5 (2) Each community mental health services program and each
6 licensed hospital shall ensure all of the following:

7 (a) Education and training in recipient rights policies and
8 procedures are provided to its recipient rights advisory committee

1 and its recipient rights appeals committee.

2 (b) The process for funding the office of recipient rights
3 includes a review of the funding by the recipient rights advisory
4 committee.

5 (c) The office of recipient rights will be protected from
6 pressures that could interfere with the impartial, even-handed, and
7 thorough performance of its duties.

8 (d) The office of recipient rights will have unimpeded access
9 to all of the following:

10 (i) All programs and services operated by or under contract
11 with the community mental health services program or licensed
12 hospital.

13 (ii) All staff employed by or under contract with the community
14 mental health services program or licensed hospital.

15 (iii) All evidence necessary to conduct a thorough investigation
16 or to fulfill its monitoring function.

17 (e) Staff of the office of recipient rights receive training
18 each year in recipient rights protection.

19 (f) Each contract between the community mental health services
20 program or licensed hospital and a provider requires both of the
21 following:

22 (i) That the provider and his or her employees receive
23 recipient rights training.

24 (ii) That recipients will be protected from rights violations
25 while they are receiving services under the contract.

26 (3) Each community mental health services program and each
27 licensed hospital shall endeavor to ensure all of the following:

1 (a) Complainants, staff of the office of recipient rights, and
2 any staff acting on behalf of a recipient ~~will~~**SHALL** be protected
3 from harassment or retaliation, **INCLUDING DISCIPLINARY ACTION,**
4 resulting from recipient rights activities and ~~that~~ appropriate
5 disciplinary action ~~will~~**SHALL** be taken ~~if there is~~**AGAINST ANY**
6 **STAFF MEMBER WHO HAS BEEN FOUND ON THE BASIS OF AVAILABLE** evidence
7 ~~of~~**TO HAVE ENGAGED IN** harassment or retaliation.

8 (b) Appropriate remedial action is taken to resolve violations
9 of rights and notify the complainants of substantiated violations
10 in a manner that does not violate employee rights.

11 **(C) THE EXECUTIVE DIRECTOR OR HOSPITAL DIRECTOR SHALL NOT**
12 **PARTICIPATE IN RECIPIENT RIGHTS INVESTIGATIONS OR DETERMINATIONS.**

13 (4) The executive director or hospital director shall select a
14 director of the office of recipient rights who has the education,
15 training, and experience to fulfill the responsibilities of the
16 office. The executive director shall not select, replace, or
17 dismiss the director of the office of recipient rights without
18 first consulting the recipient rights advisory committee. The
19 director of the office of recipient rights shall have no direct
20 clinical service responsibility.

21 (5) Each office of recipient rights established under this
22 section shall do all of the following:

23 (a) Provide or coordinate the protection of recipient rights
24 for all directly operated or contracted services.

25 (b) Ensure that recipients, parents of minor recipients, and
26 guardians or other legal representatives have access to summaries
27 of the rights guaranteed by this chapter and chapter 7a and are

1 notified of those rights in an understandable manner, both at the
2 time services are initiated and periodically during the time
3 services are provided to the recipient.

4 (c) Ensure that the telephone number and address of the office
5 of recipient rights and the names of rights officers are
6 conspicuously posted in all service sites.

7 (d) Maintain a record system for all reports of apparent or
8 suspected rights violations received within the community mental
9 health services program system or the licensed hospital system,
10 including a mechanism for logging in all complaints and a mechanism
11 for secure storage of all investigative documents and evidence.

12 (e) Ensure that each service site is visited with the
13 frequency necessary for protection of rights but in no case less
14 than annually.

15 (f) Ensure that all individuals employed by the community
16 mental health services program, contract agency, or licensed
17 hospital receive training related to recipient rights protection
18 before or within 30 days after being employed.

19 (g) Review the recipient rights policies and the rights system
20 of each provider of mental health services under contract with the
21 community mental health services program or licensed hospital to
22 ensure that the rights protection system of each provider is in
23 compliance with this act and is of a uniformly high standard.

24 (h) Serve as consultant to the executive director or hospital
25 director and to staff of the community mental health services
26 program or licensed hospital in matters related to recipient
27 rights.

1 (i) Ensure that all reports of apparent or suspected
2 violations of rights within the community mental health services
3 program system or licensed hospital system are investigated in
4 accordance with section 778 and that those reports that do not
5 warrant investigation are recorded in accordance with subdivision
6 (d).

7 (j) Semiannually provide summary complaint data consistent
8 with the annual report required in subsection (6), together with a
9 summary of remedial action taken on substantiated complaints by
10 category, to the department and to the recipient rights advisory
11 committee of the community mental health services program or
12 licensed hospital.

13 (6) The executive director or hospital director shall submit
14 to the board of the community mental health services program or the
15 governing board of the licensed hospital and the department an
16 annual report prepared by the office of recipient rights on the
17 current status of recipient rights in the community mental health
18 services program system or licensed hospital system and a review of
19 the operations of the office of recipient rights. The report shall
20 be submitted not later than December 30 of each year for the
21 preceding fiscal year or period specified in contract. The annual
22 report shall include, at a minimum, all of the following:

23 (a) Summary data by category regarding the rights of
24 recipients receiving services from the community mental health
25 services program or licensed hospital including complaints
26 received, the number of reports filed, and the number of reports
27 investigated by provider.

1 (b) The number of substantiated rights violations by category
2 and provider.

3 (c) The remedial actions taken on substantiated rights
4 violations by category and provider.

5 (d) Training received by staff of the office of recipient
6 rights.

7 (e) Training provided by the office of recipient rights to
8 contract providers.

9 (f) Desired outcomes established for the office of recipient
10 rights and progress toward these outcomes.

11 (g) Recommendations to the community mental health services
12 program board or licensed hospital governing board.

13 Sec. 780. (1) If it has been determined through investigation
14 that a right has been violated, the respondent shall take
15 appropriate remedial action that meets all of the following
16 requirements:

17 (A) **ACCEPTS RECOMMENDATIONS OF THE OFFICE THAT ARE NOT IN**
18 **CONFLICT WITH THE RIGHTS OF AN EMPLOYEE.**

19 (B) ~~(a) Corrects or provides a remedy~~ **PROVIDES ALTERNATIVE**
20 **CORRECTION OF OR REMEDIATION** for the rights violations **IF THE**
21 **RECOMMENDATIONS OF THE OFFICE ARE IN CONFLICT WITH THE RIGHTS OF AN**
22 **EMPLOYEE.**

23 (C) ~~(b)~~ Is implemented in a timely manner.

24 (D) ~~(e)~~ Attempts to prevent a recurrence of the rights
25 violation.

26 (2) The action shall be documented and made part of the record
27 maintained by the office.

1 Sec. 784. (1) Not later than 45 days after receipt of the
2 summary report under section 782, the complainant may file a
3 written appeal with the appeals committee with jurisdiction over
4 the office of recipient rights that issued the summary report.

5 (2) An appeal under subsection (1) shall be based on 1 of the
6 following grounds:

7 (a) The investigative findings of the office are not
8 consistent with the facts or with law, rules, policies, or
9 guidelines.

10 (b) The action taken or plan of action proposed by the
11 respondent does not provide an adequate remedy.

12 (c) An investigation was not initiated or completed on a
13 timely basis.

14 **(D) ADDITIONAL OR NEW INFORMATION PERTINENT TO THE CASE HAS**
15 **ARISEN, INCLUDING, BUT NOT LIMITED TO, ALLEGATIONS FROM A**
16 **COMPLAINANT, HIS OR HER REPRESENTATIVE, STAFF OF THE OFFICE, OR THE**
17 **OFFICE'S RECIPIENT RIGHTS ADVISORY COMMITTEE THAT AN EXECUTIVE**
18 **DIRECTOR OR HOSPITAL DIRECTOR, OR OTHER NONRECIPIENT RIGHTS STAFF**
19 **ACTING ON BEHALF OF THE EXECUTIVE DIRECTOR OR HOSPITAL DIRECTOR,**
20 **PARTICIPATED IN AN INVESTIGATION OR DETERMINATION OF THE OFFICE.**

21 (3) The office shall advise the complainant that there are
22 advocacy organizations available to assist the complainant in
23 preparing the written appeal and shall offer to refer the
24 complainant to those organizations. In the absence of assistance
25 from an advocacy organization, the office shall assist the
26 complainant in meeting the procedural requirements of a written
27 appeal. The office shall also inform the complainant of the option

1 of mediation under section 786.

2 (4) Within 5 business days after receipt of the written
3 appeal, members of the appeals committee shall review the appeal to
4 determine whether it meets the criteria set forth in subsection
5 (2). If the appeal is denied because the criteria in subsection (2)
6 were not met, the complainant shall be notified in writing. If the
7 appeal is accepted, written notice shall be provided to the
8 complainant and a copy of the appeal shall be provided to the
9 respondent and the responsible mental health agency.

10 (5) Within 30 days after receipt of a written appeal, the
11 appeals committee shall meet and review the facts as stated in all
12 complaint investigation documents and **ANY PERTINENT ADDITIONAL OR**
13 **NEW INFORMATION AND** shall do 1 of the following:

14 (a) Uphold the investigative findings **AND ANY RECOMMENDATIONS**
15 of the office and, **IF RELEVANT**, the action taken or plan of action
16 proposed by the respondent.

17 ~~(b) Return the investigation to the office and request that it~~
18 ~~be reopened or reinvestigated.~~ **REVISE THE INVESTIGATIVE FINDINGS OF**
19 **THE OFFICE AND MAKE ANY RECOMMENDATIONS CONSIDERED NECESSARY TO**
20 **SUPPLEMENT THE REVISED FINDINGS. IF THE RECOMMENDATIONS CALL FOR**
21 **REMEDIAL ACTION BY A RESPONDENT, THE PROVISIONS OF SECTION 780**
22 **SHALL APPLY TO THE REMEDIAL ACTION.**

23 (c) Uphold the investigative findings of the office but
24 recommend that the respondent take additional or different action
25 to remedy the violation.

26 (d) If the responsible mental health agency is a community
27 mental health services program or a licensed hospital, ~~recommend~~

1 ~~that the board of the community mental health services program or~~
 2 ~~the governing board of the licensed hospital request an external~~
 3 investigation by the state office of recipient rights.

4 (6) The appeals committee shall document its decision in
 5 writing. Within 10 working days after reaching its decision, it
 6 shall provide copies of the decision to the respondent, appellant,
 7 recipient if different than the appellant, the recipient's guardian
 8 if a guardian has been appointed, the responsible mental health
 9 agency, and the office.

10 Sec. 786. (1) Within 45 days after receiving written notice of
 11 the decision of an appeals committee under section 784(5), the
 12 appellant may file a written appeal with the ~~department~~ **RECIPIENT**
 13 **RIGHTS APPEALS COMMITTEE**. The appeal shall be based on the ~~record~~
 14 ~~established in the previous appeal, and on the allegation that the~~
 15 ~~investigative findings of the local office of recipient rights are~~
 16 ~~not consistent with the facts or with law, rules, policies, or~~
 17 ~~guidelines~~ **SAME GROUNDS ESTABLISHED FOR APPEALS UNDER SECTION**
 18 **784(2)**.

19 (2) Upon receipt of an appeal under subsection (1), the
 20 department shall give written notice of receipt of the appeal to
 21 the appellant, respondent, local office of recipient rights holding
 22 the record of the complaint, and the responsible mental health
 23 agency. The respondent, local office of recipient rights holding
 24 the record of the complaint, and the responsible mental health
 25 agency shall ensure that the department has access to all necessary
 26 documentation and other evidence cited in the complaint.

27 ~~(3) The department shall review the record based on the~~

1 ~~allegation described in subsection (1). The department shall not~~
2 ~~consider additional evidence or information that was not available~~
3 ~~during the appeal under section 784, although the department may~~
4 ~~return the matter to the board or the governing body of the~~
5 ~~licensed hospital requesting an additional investigation.~~

6 (3) ~~(4)~~ Within 30 days after receiving the appeal, the
7 ~~department~~ **RECIPIENT RIGHTS APPEALS COMMITTEE** shall review the
8 appeal and do 1 of the following:

9 (a) Affirm the decision of the **LOCAL** appeals committee.

10 (b) ~~Return the matter to the board or the governing body of~~
11 ~~the licensed hospital with instruction for additional investigation~~
12 ~~and consideration.~~ **OVERTURN THE DECISION OF THE LOCAL APPEALS**
13 **COMMITTEE AND MAKE ANY RECOMMENDATIONS CONSIDERED NECESSARY TO**
14 **SUPPLEMENT THE REVERSAL OF THE INITIAL DECISION. IF THE**
15 **RECOMMENDATIONS CALL FOR REMEDIAL ACTION BY A RESPONDENT, THE**
16 **PROVISIONS OF SECTION 780 SHALL APPLY TO THE REMEDIAL ACTION.**

17 (4) ~~(5)~~ The ~~department~~ **STATE RECIPIENT RIGHTS APPEALS**
18 **COMMITTEE** shall provide copies of its action to the respondent,
19 appellant, recipient if different than the appellant, the
20 recipient's guardian if a guardian has been appointed, the board of
21 the community mental health services program or the governing body
22 of the licensed hospital, and the local office of recipient rights
23 holding the record **OF THE INITIAL APPEAL.**