

# SENATE BILL No. 866

September 24, 2009, Introduced by Senators BRATER, JACOBS, CLARK-COLEMAN, CLARKE, SCOTT, CHERRY, OLSHOVE, ANDERSON, BASHAM, SWITALSKI and THOMAS and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending sections 116, 232a, and 232b (MCL 330.1116, 330.1232a, and 330.1232b), section 116 as amended by 1998 PA 67, section 232a as added by 1995 PA 290, and section 232b as added by 2002 PA 597.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 116. (1) Consistent with section 51 of article IV of the  
2       state constitution of 1963, which declares that the health of the  
3       people of the state is a matter of primary public concern, and as  
4       required by section 8 of article VIII of the state constitution of  
5       1963, which declares that services for the care, treatment,  
6       education, or rehabilitation of those who are seriously mentally  
7       disabled shall always be fostered and supported, the department

1 shall continually and diligently endeavor to ensure that adequate  
2 and appropriate mental health services are available to all  
3 citizens throughout the state. To this end, the department ~~shall~~  
4 ~~have~~**HAS** the general powers and duties described in this section.

5 (2) The department shall do all of the following:

6 (a) Direct services to individuals who have a serious mental  
7 illness, developmental disability, or serious emotional  
8 disturbance. The department shall give priority to the following  
9 services:

10 (i) Services for individuals with the most severe forms of  
11 serious mental illness, serious emotional disturbance, or  
12 developmental disability.

13 (ii) Services for individuals with serious mental illness,  
14 serious emotional disturbance, or developmental disability who are  
15 in urgent or emergency situations.

16 (b) Administer the provisions of chapter 2 so as to promote  
17 and maintain an adequate and appropriate system of community mental  
18 health services programs throughout the state. In the  
19 administration of chapter 2, it shall be the objective of the  
20 department to shift primary responsibility for the direct delivery  
21 of public mental health services from the state to a community  
22 mental health services program whenever the community mental health  
23 services program has demonstrated a willingness and capacity to  
24 ~~provide~~**DO BOTH OF THE FOLLOWING:**

25 (i) **PROVIDE** an adequate and appropriate system of mental health  
26 services for the citizens of that service area.

27 (ii) **COMPLY WITH REGULATORY REQUIREMENTS OF THE DEPARTMENT.**

1 (c) Engage in planning for the purpose of identifying,  
2 assessing, and enunciating the mental health needs of the state.

3 (d) Submit to the members of the house and senate standing  
4 committees and appropriation subcommittees with legislative  
5 oversight of mental health matters an annual report summarizing its  
6 assessment of the mental health needs of the state and  
7 incorporating information received from community mental health  
8 services programs under section 226. The report shall include an  
9 estimate of the cost of meeting all identified needs. Additional  
10 information shall be made available to the legislature upon  
11 request.

12 (e) Endeavor to develop and establish arrangements and  
13 procedures for the effective coordination and integration of all  
14 public mental health services, and for effective cooperation  
15 between public and nonpublic services, for the purpose of providing  
16 a unified system of statewide mental health care.

17 (f) Review and evaluate the relevance, quality, effectiveness,  
18 and efficiency of mental health services being provided by the  
19 department and assure the review and evaluation of mental health  
20 services provided by community mental health services programs. The  
21 department shall establish and implement a structured system to  
22 provide data necessary for the reviews and evaluations.

23 (g) Implement those provisions of law under which it is  
24 responsible for the licensing or certification of mental health  
25 facilities or services.

26 (h) Establish standards of training and experience for  
27 executive directors of community mental health services programs.

1 (i) Support research activities.

2 (j) Support evaluation and quality improvement activities.

3 (k) Support training, consultation, and technical assistance  
4 regarding mental health programs and services and appropriate  
5 prevention and mental health promotion activities, including those  
6 that are culturally sensitive, to employees of the department,  
7 community mental health services programs, and other nonprofit  
8 agencies providing mental health services under contract with  
9 community mental health services programs.

10 (l) Support multicultural services.

11 (3) The department may do all of the following:

12 (a) Direct services to individuals who have mental disorders  
13 that meet diagnostic criteria specified in the most recent  
14 diagnostic and statistical manual of mental health disorders  
15 published by the American psychiatric association and approved by  
16 the department and to the prevention of mental disability and the  
17 promotion of mental health. Resources that have been specifically  
18 appropriated for services to individuals with dementia, alcoholism,  
19 or substance abuse, or for the prevention of mental disability and  
20 the promotion of mental health shall be utilized for those specific  
21 purposes.

22 (b) Provide, on a residential or nonresidential basis, any  
23 type of patient or client service including but not limited to  
24 prevention, diagnosis, treatment, care, education, training, and  
25 rehabilitation.

26 (c) Operate mental health programs or facilities directly or  
27 through contractual arrangement.

1 (d) Institute pilot projects considered appropriate by the  
2 director to test new models and concepts in service delivery or  
3 mental health administration. Pilot projects may include, but need  
4 not be limited to, both of the following:

5 (i) Issuance of a voucher to a recipient of public mental  
6 health services in accordance with the recipient's individual plan  
7 of services and guidelines developed by the department.

8 (ii) Establishment of revolving loans to assist recipients of  
9 public mental health services to acquire or maintain affordable  
10 housing. Funding under this subparagraph shall only be provided  
11 through an agreement with a nonprofit fiduciary in accordance with  
12 guidelines and procedures developed by the department related to  
13 the use, issuance, and accountability of revolving loans used for  
14 recipient housing.

15 (e) Enter into an agreement, contract, or arrangement with any  
16 individual or public or nonpublic entity that is necessary or  
17 appropriate to fulfill those duties or exercise those powers that  
18 have by statute been given to the department.

19 (f) Accept gifts, grants, bequests, and other donations for  
20 use in performing its functions. Any money or property accepted  
21 shall be used as directed by its donor and in accordance with law  
22 and the rules and procedures of the department.

23 (g) The department has any other power necessary or  
24 appropriate to fulfill those duties and exercise those powers that  
25 have been given to the department by law and that are not otherwise  
26 prohibited by law.

27 Sec. 232a. (1) Subject to section 114a, the department shall

1 promulgate rules to establish standards for certification and the  
2 certification review process for community mental health services  
3 programs. The standards shall include but not be limited to all of  
4 the following:

5 (a) Matters of governance, resource management, quality  
6 improvement, service delivery, and safety management.

7 (b) Promotion and protection of recipient rights.

8 (2) After reviewing a community mental health services  
9 program, the department shall notify a program that substantially  
10 complies with the standards established under this section that it  
11 is certified by the department.

12 (3) The department may waive the certification review process  
13 in whole or in part and consider the community mental health  
14 services program to be in substantial compliance with the standards  
15 established under this section if the program has received  
16 accreditation from a national accrediting organization recognized  
17 by the department that includes review of matters described in  
18 subsection (1)(a).

19 (4) If the department certifies a community mental health  
20 services program despite some items of noncompliance with the  
21 standards established under this section, the notice of  
22 certification shall identify the items of noncompliance and the  
23 program shall correct the items of noncompliance. The department  
24 shall require the community mental health board to submit a plan to  
25 correct items of noncompliance before recertification or sooner at  
26 the discretion of the department.

27 (5) Certification is effective for 3 years and is not

1 transferable. Requests for recertification shall be submitted to  
2 the department at least 6 months before the expiration of  
3 certification. Certification remains in effect after the submission  
4 of a renewal request until the department conducts a review and  
5 makes a redetermination.

6 (6) The department shall conduct an annual review of each  
7 community mental health services program's recipient rights system  
8 to ensure compliance with standards established under subsection  
9 (1)(b). An on-site review shall be conducted once every 3 years.

10 (7) The community mental health services program shall  
11 promptly notify the department of any changes that may affect  
12 continued certification.

13 (8) The department may deny certification if the community  
14 mental health services program cannot demonstrate substantial  
15 compliance with the standards established under this section.

16 (9) In lieu of denying certification, the department may issue  
17 a provisional certification for a period of up to 6 months upon  
18 receiving a plan of correction submitted by the community mental  
19 health services board. The department shall provide a copy of the  
20 review and the approved plan of correction to the board of  
21 commissioners of each county that established the county community  
22 mental health agency or created the community mental health  
23 organization or community mental health authority. A provisional  
24 certification may be extended, but the entire provisional period  
25 shall not exceed 1 year. The department shall conduct an on-site  
26 review to determine the community mental health services program's  
27 compliance with the plan of correction at least 30 days before the

1 expiration of the provisional certification. A provisional  
2 certification automatically expires either on its original  
3 expiration date or the expiration date of the extension granted.

4 (10) If a community mental health services program is denied  
5 certification, fails to comply with an approved plan of correction  
6 before the expiration of a provisional certification, or fails to  
7 comply substantially with the standards established under this  
8 section, the department shall notify the community mental health  
9 services board and the board of commissioners of each county that  
10 established the agency or created the organization or authority of  
11 the department's intention to suspend, deny, or revoke  
12 certification. The notice shall be sent by certified mail and shall  
13 set forth the particular reasons for the proposed action and offer  
14 an opportunity for a hearing with the director of the department's  
15 division that manages contracts with community mental health  
16 services programs. If it desires a hearing, the community mental  
17 health services board shall request it in writing within 60 days  
18 after receipt of the notice. The department shall hold the hearing  
19 not less than 30 days or more than 60 days from the date it  
20 receives the request for a hearing.

21 (11) The director of the department's division that manages  
22 contracts with community mental health services programs shall make  
23 a decision regarding suspension, denial, or revocation of  
24 certification based on evidence presented at the hearing or on the  
25 default of the community mental health services board. A copy of  
26 the decision shall be sent by certified mail within 45 days after  
27 the close of the hearing to the community mental health services



1 board and to the board of commissioners of each county that  
2 established the agency or created the organization or authority.

3 (12) A community mental health services board may appeal a  
4 decision made under subsection (11) as provided in chapter 4 of the  
5 administrative procedures act of 1969, ~~Act No. 306 of the Public~~  
6 ~~Acts of 1969, being sections 24.271 to 24.287 of the Michigan~~  
7 ~~Compiled Laws 1969 PA 306, MCL 24.271 TO 24.287.~~

8 (13) During the period of certification, the department may  
9 conduct an unannounced review of a certified community mental  
10 health services program. The department shall conduct an  
11 unannounced review of a certified community mental health services  
12 program in response to information that raises questions regarding  
13 recipient health or safety. If the department finds based on its  
14 review that the community mental health services program does not  
15 substantially comply with the standards established under this  
16 section, the department shall provide notice and a hearing under  
17 subsections (10) and (11).

18 (14) DURING THE APPEAL PROCESS DESCRIBED IN THIS SECTION, THE  
19 DEPARTMENT MAY DIRECT A COMMUNITY MENTAL HEALTH SERVICES PROGRAM TO  
20 TAKE REMEDIAL ACTION REGARDING ISSUES THAT LED TO THE DEPARTMENT'S  
21 NOTICE OF NONCOMPLIANCE WITH STANDARDS. IF THE COMMUNITY MENTAL  
22 HEALTH SERVICES PROGRAM DOES NOT ADHERE TO THE DEPARTMENT'S  
23 DIRECTION UNDER THIS SUBSECTION, THE DEPARTMENT MAY PLACE THE  
24 ADMINISTRATION OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM OR,  
25 IF RECIPIENT RIGHTS REPRESENT THE AREA OF CONTENTION, ITS RECIPIENT  
26 RIGHTS OFFICE, UNDER RECEIVERSHIP WITH ANY EXPENSE NECESSARY FOR  
27 THE RECEIVERSHIP TO BE TAKEN FROM THE DEPARTMENT'S APPROPRIATION TO

1 **THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM.**

2 (15) ~~(14)~~—If a community mental health services program fails  
 3 to obtain or retain certification as a result of the department's  
 4 review, has exhausted the time period for provisional  
 5 certification, is not engaged in the process of appeal or appeal  
 6 has been unsuccessful, and if no agreement has been reached by the  
 7 department with the community mental health services program to  
 8 assure certification compliance within a specified time period, the  
 9 department shall within 90 days do ~~both~~ **EITHER** of the following:

10 ~~—— (a) Cancel the state funding commitment to the community~~  
 11 ~~mental health services board.~~

12 ~~—— (b) Utilize the funds previously provided to the community~~  
 13 ~~mental health services board to do 1 or more of the following.~~

14 (A) **CONTINUE THE STATE FUNDING COMMITMENT TO THE COMMUNITY**  
 15 **MENTAL HEALTH SERVICES PROGRAM WHILE PLACING IT UNDER RECEIVERSHIP**  
 16 **UNTIL REPLACEMENTS ARE PROCURED FOR ANY OR ALL OF THE FOLLOWING**  
 17 **POSITIONS WITHIN THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM:**

18 (i) **BOARD MEMBERS.**

19 (ii) **EXECUTIVE DIRECTOR.**

20 (iii) **MEDICAL DIRECTOR.**

21 (iv) **RECIPIENT RIGHTS DIRECTOR.**

22 (B) **CANCEL THE STATE FUNDING COMMITMENT TO THE COMMUNITY**  
 23 **MENTAL HEALTH SERVICES PROGRAM AND UTILIZE THE FUNDS PREVIOUSLY**  
 24 **PROVIDED TO THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM TO DO 1 OR**  
 25 **MORE OF THE FOLLOWING:**

26 (i) Secure services from other providers of mental health  
 27 services that the department has determined can operate in

1 substantial compliance with the standards established under this  
2 section and continue the delivery of services within the county or  
3 counties.

4 (ii) Provide the service.

5 (16) ~~(15)~~—If state funding is canceled under subsection ~~(14)~~  
6 (15) and the community mental health services program is an  
7 authority created under section 205, the county or counties that  
8 created the authority are financially liable only for the local  
9 match formula established for the authority under chapter 3. If  
10 state funding is canceled under subsection ~~(14)~~ (15) and the  
11 community mental health services program is a county community  
12 mental health agency or a community mental health organization, the  
13 county or counties that established the agency are financially  
14 liable for local match for all services contractually or directly  
15 provided by the department to residents of the county or counties  
16 in accordance with chapter 3.

17 (17) ~~(16)~~—The department shall not utilize the certification  
18 process under this section to require a community mental health  
19 services program to become a community mental health authority.  
20 Community mental health authority status is voluntary as provided  
21 in section 205.

22 ~~—— (17) Subject to section 114a, the department shall submit~~  
23 ~~proposed rules for certification to public hearing within 6 months~~  
24 ~~after the effective date of the amendatory act that added this~~  
25 ~~section.~~

26 Sec. 232b. (1) The department shall establish standards for  
27 community mental health services programs designated as specialty

1 prepaid health plans under the medicaid managed care program  
2 described in section 109f of the social welfare act, 1939 PA 280,  
3 MCL 400.109f. The standards established under this section shall  
4 reference applicable federal regulations related to medicaid  
5 managed care programs and specify additional state requirements for  
6 specialty prepaid health plans. The standards established under  
7 this section shall be published in a departmental bulletin or by an  
8 updating insert to a departmental manual.

9 (2) As a condition for contracting and for receiving payment  
10 under the medicaid managed care program, a community mental health  
11 services program designated as a specialty prepaid health plan  
12 shall certify both of the following:

13 (a) That the program is in substantial compliance with the  
14 standards promulgated by the department and with applicable federal  
15 regulations.

16 (b) That the program has established policies and procedures  
17 to monitor compliance with the standards promulgated by the  
18 department and with applicable federal regulations and to ensure  
19 program integrity.

20 (3) The department shall conduct an annual review of all  
21 community mental health services programs designated as specialty  
22 prepaid health plans to verify the declarations made by the  
23 community mental health services program and to monitor compliance  
24 with the standards promulgated for specialty prepaid health plans  
25 and with applicable federal regulations. The annual review process  
26 established under this section shall be published in a departmental  
27 bulletin or by an updating insert to a departmental manual.

1 (4) The department may conduct separate reviews of a specialty  
2 prepaid health plan in response to beneficiary complaints,  
3 financial status considerations, or health and safety concerns.

4 (5) Contracts with specialty prepaid health plans shall  
5 indicate the sanctions that the department may invoke if it makes a  
6 determination that a specialty prepaid health plan is not in  
7 substantial compliance with promulgated standards and with  
8 established federal regulations, that the specialty prepaid health  
9 plan has misrepresented or falsified information reported to the  
10 state or to the federal government, or that the specialty prepaid  
11 health plan has failed substantially to provide necessary covered  
12 services to recipients under the terms of the contract. Sanctions  
13 may ~~include intermediate~~ **INVOLVE** actions including, but not limited  
14 to, a monetary penalty imposed on the administrative, ~~and~~  
15 management, **OR OTHER** operation of the specialty prepaid health  
16 plan, imposition of temporary **RECEIVERSHIP OR** state management of a  
17 community mental health services program operating as a specialty  
18 prepaid health plan, or termination of the department's medicaid  
19 managed care contract with the community mental health services  
20 program.

21 (6) ~~Before~~ **WHEN** imposing a sanction on a community mental  
22 health services program that is operating as a specialty prepaid  
23 health plan, the department shall provide that specialty prepaid  
24 health plan with timely written notice that explains both of the  
25 following:

26 (a) The basis and nature of the sanction.

27 (b) The opportunity for a hearing to contest or dispute the

1 department's findings and intended sanction, ~~prior to~~**BEFORE** the  
2 imposition of the sanction. A hearing under this section is subject  
3 to the provisions governing a contested case under the  
4 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to  
5 24.328, unless otherwise agreed to in the specialty prepaid health  
6 plan contract. **THE PERIOD DURING WHICH AN APPEAL HAS BEEN FILED AND**  
7 **NOT YET RESOLVED SHALL BE GOVERNED BY THE PROVISIONS OF SECTION**  
8 **232A(14) .**