

# SENATE BILL No. 870

September 24, 2009, Introduced by Senators SCOTT, BRATER, GLEASON, JACOBS, CLARK-COLEMAN, CLARKE, 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 720, 754, and 755 (MCL 330.1720, 330.1754, and 330.1755), sections 720 and 755 as added by 1995 PA 290 and section 754 as amended by 2006 PA 604, and by adding section 142a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

**SEC. 142A. A FACILITY LICENSED UNDER SECTIONS 134 TO 150 SHALL  
 MAKE AVAILABLE TO THE DEPARTMENT ALL REQUESTED INFORMATION  
 REGARDING THE FACILITY'S RECIPIENT RIGHTS PROGRAM AND POLICIES.**

Sec. 720. The department shall provide ~~an annual statistical  
 report to the members of the~~ house and senate standing committees  
 and appropriations subcommittees with legislative oversight of  
 mental health issues **AN ANNUAL STATISTICAL AND ANALYTICAL REPORT**  
 summarizing ~~all~~ **BOTH OF THE FOLLOWING:**

1           **(A) ALL** deaths and causes of deaths, if known, of mental  
2 health care recipients **AND APPLICANTS** that have been reported to  
3 the department and all deaths that have occurred in state  
4 facilities.

5           **(B) ALL KNOWN INSTANCES OF SERIOUS INJURY, SERIOUS PHYSICAL**  
6 **ILLNESS, INCARCERATION, HOMELESSNESS, DELAY OR INTERRUPTION OF**  
7 **EDUCATION OR EMPLOYMENT, AND SELF-HARM, HARM TO OTHERS, OR HARM**  
8 **INFLECTED BY OTHERS, INCLUDING SUBSTANTIATED ALLEGATIONS OF ABUSE**  
9 **OR NEGLECT, AMONG MENTAL HEALTH CARE RECIPIENTS AND APPLICANTS.**

10           Sec. 754. (1) The department shall establish a state office of  
11 recipient rights subordinate only to the director.

12           (2) The department shall ensure all of the following:

13           (a) The process for funding the state office of recipient  
14 rights includes a review of the funding by the state recipient  
15 rights advisory committee.

16           (b) The state office of recipient rights will be protected  
17 from pressures that could interfere with the impartial, even-  
18 handed, and thorough performance of its duties.

19           (c) The state office of recipient rights will have unimpeded  
20 access to all of the following:

21           (i) All programs and services operated by or under contract  
22 with the department except where other recipient rights systems  
23 authorized by this act exist.

24           (ii) All staff employed by or under contract with the  
25 department.

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

1 (d) Staff of the state office of recipient rights receive  
2 training each year in recipient rights protection.

3 (e) Each contract between the department and a provider  
4 requires both of the following:

5 (i) That the provider and his or her employees receive annual  
6 training in recipient rights protection.

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

9 (f) Technical assistance and training in recipient rights  
10 protection are available to all community mental health services  
11 programs and other mental health service providers subject to this  
12 act.

13 (3) The department shall endeavor to ensure all of the  
14 following:

15 (a) The state office of recipient rights has sufficient staff  
16 and other resources necessary to perform the duties described in  
17 this section.

18 (b) Complainants, staff of the state office of recipient  
19 rights, and any staff acting on behalf of a recipient will be  
20 protected from harassment or retaliation resulting from recipient  
21 rights activities.

22 (c) Appropriate remedial action is taken to resolve violations  
23 of rights and notify the complainants of substantiated violations  
24 in a manner that does not violate employee rights.

25 (4) After consulting with the state recipient rights advisory  
26 committee, the department director shall select a director of the  
27 state office of recipient rights who has the education, training,

1 and experience to fulfill the responsibilities of the office. The  
2 department director shall not replace or dismiss the director of  
3 the state office of recipient rights without first consulting the  
4 state recipient rights advisory committee. The director of the  
5 state office of recipient rights shall have no direct service  
6 responsibility. The director of the state office of recipient  
7 rights shall report directly and solely to the department director.  
8 The department director shall not delegate his or her  
9 responsibility under this subsection.

10 (5) The state office of recipient rights may do all of the  
11 following:

12 (a) Investigate apparent or suspected violations of the rights  
13 guaranteed by this chapter.

14 (b) Resolve disputes relating to violations.

15 (c) Act on behalf of recipients to obtain appropriate remedies  
16 for any apparent violations.

17 (d) Apply for and receive grants, gifts, and bequests to  
18 effectuate any purpose of this chapter.

19 (6) The state office of recipient rights shall do all of the  
20 following:

21 (a) Ensure that recipients, parents of minor recipients, and  
22 guardians or other legal representatives have access to summaries  
23 of the rights guaranteed by this chapter and chapter 7a and are  
24 notified of those rights in an understandable manner, both at the  
25 time services are requested and periodically during the time  
26 services are provided to the recipient.

27 (b) Ensure that the telephone number and address of the office

1 of recipient rights and the names of rights officers are  
2 conspicuously posted in all service sites.

3 (c) Maintain a record system for all reports of apparent or  
4 suspected rights violations received, including a mechanism for  
5 logging in all complaints and a mechanism for secure storage of all  
6 investigative documents and evidence.

7 (d) Initiate actions that are appropriate and necessary to  
8 safeguard and protect rights guaranteed by this chapter to  
9 recipients of services provided directly by the department or by  
10 its contract providers other than community mental health services  
11 programs.

12 (e) Receive reports of apparent or suspected violations of  
13 rights guaranteed by this chapter. The state office of recipient  
14 rights shall refer reports of apparent or suspected rights  
15 violations to the recipient rights office of the appropriate  
16 provider to be addressed by the provider's internal rights  
17 protection mechanisms. The state office shall intervene as  
18 necessary to act on behalf of recipients in situations in which the  
19 **DEPARTMENT** director ~~of the department~~ considers the **PROVIDER'S**  
20 rights protection system ~~of the provider~~ to be out of compliance  
21 with this act and rules promulgated under this act.

22 (f) Upon request, advise recipients of the process by which a  
23 rights complaint or appeal may be made and assist recipients in  
24 preparing written rights complaints and appeals.

25 (g) Advise recipients that there are advocacy organizations  
26 available to assist recipients in preparing written rights  
27 complaints and appeals and offer to refer recipients to those

1 organizations.

2 (h) Upon receipt of a complaint, advise the complainant of the  
3 complaint process, appeal process, and mediation option.

4 (i) Ensure that each service site operated by the department  
5 or by a provider under contract with the department, other than a  
6 community mental health services program, is visited by recipient  
7 rights staff with the frequency necessary for protection of rights  
8 but in no case less than annually.

9 (j) Ensure that all individuals employed by the department  
10 receive department-approved training related to recipient rights  
11 protection before or within 30 days after being employed.

12 (k) Ensure that all reports of apparent or suspected  
13 violations of rights within state facilities or programs operated  
14 by providers under contract with the department other than  
15 community mental health services programs are investigated in  
16 accordance with section 778 and that those reports that do not  
17 warrant investigation are recorded in accordance with subdivision  
18 (c).

19 (l) Review semiannual statistical rights data submitted by  
20 community mental health services programs and licensed hospitals to  
21 determine trends and patterns in the protection of recipient rights  
22 in the public mental health system and provide a summary of the  
23 data to community mental health services programs and to the  
24 ~~DEPARTMENT director. of the department.~~

25 **(M) REQUEST AND REVIEW ADDITIONAL INFORMATION AS NECESSARY**  
26 **REGARDING RECIPIENT RIGHTS ISSUES IN LICENSED HOSPITALS AND**  
27 **TRANSMIT THE FINDINGS AND RECOMMENDATIONS REGARDING PROBLEM AREAS**

1 TO THE DIRECTOR.

2 (N) ~~(m)~~—Serve as consultant to the director in matters related  
3 to recipient rights.

4 (O) ~~(n)~~—At least quarterly, provide summary complaint data  
5 consistent with the annual report required in subdivision ~~(e)~~—(Q),  
6 together with a summary of remedial action taken on substantiated  
7 complaints, to the department and the state recipient rights  
8 advisory committee.

9 (P) ANNUALLY REQUIRE THAT ALL COMMUNITY MENTAL HEALTH SERVICES  
10 PROGRAMS, STATE FACILITIES, AND LICENSED HOSPITALS PROVIDE SUMMARY  
11 INFORMATION AND ANALYSIS ON ALL KNOWN INSTANCES OF DEATH, SERIOUS  
12 INJURY, SERIOUS PHYSICAL ILLNESS, INCARCERATION, HOMELESSNESS, AND  
13 DELAY OR INTERRUPTION OF EDUCATION AMONG MENTAL HEALTH CARE  
14 RECIPIENTS AND APPLICANTS. THE STATE OFFICE OF RECIPIENT RIGHTS  
15 SHALL REVIEW AND INVESTIGATE, AS WARRANTED, RIGHTS ISSUES RELATED  
16 TO THIS INFORMATION AND INFORMATION PROVIDED TO THE LEGISLATURE  
17 UNDER SECTION 720.

18 (Q) ~~(e)~~—Submit to the department director and to the  
19 committees and subcommittees of the legislature with legislative  
20 oversight of mental health matters, for availability to the public,  
21 an annual report on the current status of recipient rights for the  
22 state. The report shall be submitted not later than March 31 of  
23 each year for the preceding fiscal year. The annual report shall  
24 include, at a minimum, all of the following:

25 (i) Summary data by type or category regarding the rights of  
26 recipients receiving services from the department including the  
27 number of complaints received by each state facility and other

1 state-operated placement agency, the number of reports filed, and  
2 the number of reports investigated.

3 (ii) The number of substantiated rights violations by category  
4 and by state facility.

5 (iii) The remedial actions taken on substantiated rights  
6 violations by category and by state facility.

7 (iv) Training received by staff of the state office of  
8 recipient rights.

9 (v) Training provided by the state office of recipient rights  
10 to staff of contract providers.

11 (vi) Outcomes of assessments of the recipient rights system of  
12 each community mental health services program.

13 (vii) Identification of patterns and trends in rights  
14 protection in the public mental health system in this state.

15 (viii) Review of budgetary issues including staffing and  
16 financial resources.

17 (ix) Summary of the results of any consumer satisfaction  
18 surveys conducted.

19 (x) Recommendations to the department.

20 **(R)** ~~(p)~~—Provide education and training to its recipient rights  
21 advisory committee and its recipient rights appeals committee.

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

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



1 (a) Education and training in recipient rights policies and  
2 procedures are provided to its recipient rights advisory committee  
3 and its recipient rights appeals committee.

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

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

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

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

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

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

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

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

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

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

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

3 (a) Complainants, staff of the office of recipient rights, and  
4 any staff acting on behalf of a recipient will be protected from  
5 harassment or retaliation resulting from recipient rights  
6 activities and that appropriate disciplinary action will be taken  
7 if there is evidence of harassment or retaliation.

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

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

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

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

23 (b) Ensure that recipients, parents of minor recipients, and  
24 guardians or other legal representatives have access to summaries  
25 of the rights guaranteed by this chapter and chapter 7a and are  
26 notified of those rights in an understandable manner, both at the  
27 time services are initiated and periodically during the time

1 services are provided to the recipient.

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

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

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

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

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

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

26 (i) Ensure that all reports of apparent or suspected  
27 violations of rights within the community mental health services

1 program system or licensed hospital system are investigated in  
2 accordance with section 778 and that those reports that do not  
3 warrant investigation are recorded in accordance with subdivision  
4 (d) .

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

11 **(K) PROVIDE THE DEPARTMENT WITH ADDITIONAL RECIPIENT RIGHTS**  
12 **INFORMATION AS NEEDED FOR DEPARTMENTAL REVIEWS RELATED TO COMMUNITY**  
13 **MENTAL HEALTH CERTIFICATION OR HOSPITAL LICENSURE.**

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

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

1 investigated by provider.

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

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

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

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

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

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