

# SENATE BILL No. 253

March 12, 2013, Introduced by Senator ROBERTSON and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 748 (MCL 330.1748), as amended by 1998 PA 497.

## 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 health  
3       services to a recipient, shall be kept confidential and shall not  
4       be open to public inspection. The information may be disclosed  
5       outside the department, community mental health services program,  
6       licensed facility, or contract provider, whichever is the holder of  
7       the record, only in the circumstances and under the conditions set  
8       forth in this section or section 748a.

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

1 be protected and shall not be disclosed unless it is germane to the  
2 authorized purpose for which disclosure was sought. ~~and, when~~  
3 **WHEN** practicable, no other information shall be disclosed unless it  
4 is germane to the authorized purpose for which disclosure was  
5 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, 1996,  
11 information made confidential by this section shall be disclosed to  
12 an adult recipient, upon the recipient's request, if the recipient  
13 does not have a guardian and has not been adjudicated legally  
14 incompetent. The holder of the record shall comply with the adult  
15 recipient's request for disclosure as expeditiously as possible but  
16 in no event later than the earlier of 30 days after receipt of the  
17 request or, if the recipient is receiving treatment from the holder  
18 of the record, before the recipient is released from treatment.

19 (5) Except as otherwise provided in this section or section  
20 748a, when requested, information made confidential by this section  
21 shall be disclosed only under 1 or more of the following  
22 circumstances:

23 (a) ~~Pursuant to~~ **UNDER** an order or a subpoena of a court of  
24 record or a subpoena of the legislature, unless the information is  
25 privileged by law.

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

1 (c) To an attorney for the recipient, with the consent of the  
2 recipient, the recipient's guardian with authority to consent, or  
3 the parent with legal and physical custody of a minor recipient.

4 (d) If necessary in order to comply with another provision of  
5 law.

6 (e) To the department if the information is necessary in order  
7 for the department to discharge a responsibility placed upon it by  
8 law.

9 (f) To the office of the auditor general if the information is  
10 necessary for that office to discharge its constitutional  
11 responsibility.

12 (g) ~~To~~ **EXCEPT AS PROVIDED IN SUBDIVISIONS (H) AND (I),** TO a  
13 surviving spouse of the recipient or, if there is no surviving  
14 spouse, to the individual or individuals most closely related to  
15 the deceased recipient within the third degree of consanguinity as  
16 defined in civil law, for the purpose of applying for and receiving  
17 benefits.

18 **(H) IF THE RECIPIENT HAS BEEN DECEASED FOR LESS THAN 25 YEARS,**  
19 **TO AN INDIVIDUAL RELATED TO THE DECEASED RECIPIENT WITHIN THE THIRD**  
20 **DEGREE OF CONSANGUINITY AS DEFINED IN CIVIL LAW. PRIOR TO DEATH, A**  
21 **RECIPIENT MAY SIGN A PROHIBITION TO RELEASE OF HIS OR HER RECORDS**  
22 **UNDER THIS SUBDIVISION. THE RECIPIENT MAY REVOKE THAT PROHIBITION**  
23 **AT ANY TIME.**

24 **(I) IF THE RECIPIENT HAS BEEN DECEASED FOR 25 YEARS OR MORE,**  
25 **TO AN INDIVIDUAL WHO CAN PROVE THAT HE OR SHE IS IN ANY WAY RELATED**  
26 **TO THE DECEASED RECIPIENT. PRIOR TO DEATH, A RECIPIENT MAY SIGN A**  
27 **PROHIBITION TO RELEASE OF HIS OR HER RECORDS UNDER THIS**

**SUBDIVISION. THE RECIPIENT MAY REVOKE THAT PROHIBITION AT ANY TIME.**

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

(a) A provider of mental health services to the recipient.

(b) The recipient or his or her guardian or the parent of a minor recipient or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.

(7) Information may be disclosed in the discretion of the holder of the record under 1 or more of the following circumstances:

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

(b) As necessary for the purpose of outside research, evaluation, accreditation, or statistical compilation. The individual who is the subject of the information shall not be identified in the disclosed information unless the identification is essential in order to achieve the purpose for which the information is sought or if preventing the identification would clearly be impractical, but not if the subject of the information is likely to be harmed by the identification.

(c) To a provider of mental or other health services or a

1 public agency, if there is a compelling need for disclosure based  
2 upon a substantial probability of harm to the recipient or other  
3 individuals.

4 (8) If required by federal law, the department or a community  
5 mental health services program or licensed facility shall grant a  
6 representative of the protection and advocacy system designated by  
7 the governor in compliance with section 931 access to the records  
8 of all of the following:

9 (a) A recipient, if the recipient, the recipient's guardian  
10 with authority to consent, or a minor recipient's parent with legal  
11 and physical custody of the recipient has consented to the access.

12 (b) A recipient, including a recipient who has died or whose  
13 location is unknown, if all of the following apply:

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

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

18 (iii) The protection and advocacy system has received a  
19 complaint on behalf of the recipient or has probable cause to  
20 believe based on monitoring or other evidence that the recipient  
21 has been subject to abuse or neglect.

22 (c) A recipient who has a guardian or other legal  
23 representative if all of the following apply:

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

27 (ii) Upon receipt of the name and address of the recipient's

1 legal representative, the protection and advocacy system has  
2 contacted the representative and offered assistance in resolving  
3 the situation.

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

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

13 (10) The holder of an individual's record, if authorized to  
14 release information for clinical purposes by the individual or the  
15 individual's guardian or a parent of a minor, shall release a copy  
16 of the entire medical and clinical record to the provider of mental  
17 health services.