

HOUSE BILL No. 5819

April 17, 2018, Introduced by Reps. Kesto, Vaupel and Guerra and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
by amending sections 100a, 400, 415, 416, 419, and 420 (MCL
330.1100a, 330.1400, 330.1415, 330.1416, 330.1419, and 330.1420),
sections 100a and 420 as amended by 2016 PA 320, section 400 as
amended by 2004 PA 553, section 415 as amended by 2004 PA 557,
section 416 as amended by 1995 PA 290, and section 419 as amended
by 1984 PA 186.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 100a. (1) "Abilities" means the qualities, skills, and
2 competencies of an individual that reflect the individual's talents
3 and acquired proficiencies.

4 (2) "Abuse" means nonaccidental physical or emotional harm to
5 a recipient, or sexual contact with or sexual penetration of a

1 recipient as those terms are defined in section 520a of the
2 Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed
3 by an employee or volunteer of the department, a community mental
4 health services program, or a licensed hospital or by an employee
5 or volunteer of a service provider under contract with the
6 department, community mental health services program, or licensed
7 hospital.

8 (3) "Adaptive skills" means skills in 1 or more of the
9 following areas:

- 10 (a) Communication.
- 11 (b) Self-care.
- 12 (c) Home living.
- 13 (d) Social skills.
- 14 (e) Community use.
- 15 (f) Self-direction.
- 16 (g) Health and safety.
- 17 (h) Functional academics.
- 18 (i) Leisure.
- 19 (j) Work.

20 (4) "Adult foster care facility" means an adult foster care
21 facility licensed under the adult foster care facility licensing
22 act, 1979 PA 218, MCL 400.701 to 400.737.

23 (5) "Alcohol and drug abuse counseling" means the act of
24 counseling, modification of substance use disorder related
25 behavior, and prevention techniques for individuals with substance
26 use disorder, their significant others, and individuals who could
27 potentially develop a substance use disorder.

1 (6) "Applicant" means an individual or his or her legal
2 representative who makes a request for mental health services.

3 (7) "Approved service program" means a substance use disorder
4 services program licensed under part 62 of the public health code,
5 1978 PA 368, MCL 333.6230 to 333.6251, to provide substance use
6 disorder treatment and rehabilitation services by the department-
7 designated community mental health entity and approved by the
8 federal government to deliver a service or combination of services
9 for the treatment of incapacitated individuals.

10 (8) "Assisted outpatient treatment" or "AOT" means the
11 categories of outpatient services ordered by the court under
12 section 468 or 469a. Assisted outpatient treatment may include case
13 management services to provide care coordination **UNDER THE**
14 **SUPERVISION OF A PSYCHIATRIST AND DEVELOPED IN ACCORDANCE WITH**
15 **PERSON-CENTERED PLANNING UNDER SECTION 712.** Assisted outpatient
16 treatment may also include 1 or more of the following categories of
17 services: medication; periodic blood tests or urinalysis to
18 determine compliance with prescribed medications; individual or
19 group therapy; day or partial day programming activities;
20 vocational, educational, or self-help training or activities;
21 assertive community treatment team services; alcohol or substance
22 use disorder treatment and counseling and periodic tests for the
23 presence of alcohol or illegal drugs for an individual with a
24 history of alcohol abuse or substance use disorder; supervision of
25 living arrangements; and any other services within a local or
26 unified services plan developed under this act that are prescribed
27 to treat the individual's mental illness and to assist the

1 individual in living and functioning in the community or to attempt
2 to prevent a relapse or deterioration that may reasonably be
3 predicted to result in suicide, the need for hospitalization, or
4 serious violent behavior. The medical review and direction included
5 in an assisted outpatient treatment plan shall be provided under
6 the supervision of a psychiatrist.

7 (9) "Board" means the governing body of a community mental
8 health services program.

9 (10) "Board of commissioners" means a county board of
10 commissioners.

11 (11) "Center" means a facility operated by the department to
12 admit individuals with developmental disabilities and provide
13 habilitation and treatment services.

14 (12) "Certification" means formal approval of a program by the
15 department in accordance with standards developed or approved by
16 the department.

17 (13) "Child abuse" and "child neglect" mean those terms as
18 defined in section 2 of the child protection law, 1975 PA 238, MCL
19 722.622.

20 (14) "Child and adolescent psychiatrist" means 1 or more of
21 the following:

22 (a) A physician who has completed a residency program in child
23 and adolescent psychiatry approved by the Accreditation Council for
24 Graduate Medical Education or the American Osteopathic Association,
25 or who has completed 12 months of child and adolescent psychiatric
26 rotation and is enrolled in an approved residency program as
27 described in this subsection.

1 (b) A psychiatrist employed by or under contract as a child
2 and adolescent psychiatrist with the department or a community
3 mental health services program on March 28, 1996, who has education
4 and clinical experience in the evaluation and treatment of children
5 or adolescents with serious emotional disturbance.

6 (c) A psychiatrist who has education and clinical experience
7 in the evaluation and treatment of children or adolescents with
8 serious emotional disturbance who is approved by the director.

9 (15) "Children's diagnostic and treatment service" means a
10 program operated by or under contract with a community mental
11 health services program, that provides examination, evaluation, and
12 referrals for minors, including emergency referrals, that provides
13 or facilitates treatment for minors, and that has been certified by
14 the department.

15 (16) "Community mental health authority" means a separate
16 legal public governmental entity created under section 205 to
17 operate as a community mental health services program.

18 (17) "Community mental health organization" means a community
19 mental health services program that is organized under the urban
20 cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to
21 124.512.

22 (18) "Community mental health services program" means a
23 program operated under chapter 2 as a county community mental
24 health agency, a community mental health authority, or a community
25 mental health organization.

26 (19) "Consent" means a written agreement executed by a
27 recipient, a minor recipient's parent, ~~or~~ a recipient's legal

representative with authority to execute a consent, **OR A FULL OR LIMITED GUARDIAN AUTHORIZED UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO 700.8206, WITH THE AUTHORITY TO CONSENT**, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

(20) "County community mental health agency" means an official county or multicounty agency created under section 210 that operates as a community mental health services program and that has not elected to become a community mental health authority or a community mental health organization.

(21) "Department" means the department of health and human services.

(22) "Department-designated community mental health entity" means the community mental health authority, community mental health organization, community mental health services program, county community mental health agency, or community mental health regional entity designated by the department to represent a region of community mental health authorities, community mental health organizations, community mental health services programs, or county community mental health agencies.

(23) "Dependent living setting" means all of the following:

(a) An adult foster care facility.

(b) A nursing home licensed under ~~article 17~~ **PART 217** of the public health code, 1978 PA 368, MCL ~~333.20101 to 333.22260~~ **333.21701 TO 333.21799E**.

(c) A home for the aged licensed under ~~article 17~~ **PART 213** of

the public health code, 1978 PA 368, MCL ~~333.20101 to~~
~~333.22260.~~ **333.21301 TO 333.21335.**

(24) "Designated representative" means any of the following:

(a) A registered nurse or licensed practical nurse licensed or otherwise authorized under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242.

(b) A paramedic licensed or otherwise authorized under part 209 of the public health code, 1978 PA 368, MCL 333.20901 to 333.20979.

(c) A physician's assistant licensed or otherwise authorized under part 170 or 175 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084 and 333.17501 to 333.17556.

(d) An individual qualified by education, training, and experience who performs acts, tasks, or functions under the supervision of a physician.

(25) "Developmental disability" means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

(ii) Is manifested before the individual is 22 years old.

(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

(A) Self-care.

(B) Receptive and expressive language.

1 (C) Learning.

2 (D) Mobility.

3 (E) Self-direction.

4 (F) Capacity for independent living.

5 (G) Economic self-sufficiency.

6 (v) Reflects the individual's need for a combination and
7 sequence of special, interdisciplinary, or generic care, treatment,
8 or other services that are of lifelong or extended duration and are
9 individually planned and coordinated.

10 (b) If applied to a minor from birth to 5 years of age, a
11 substantial developmental delay or a specific congenital or
12 acquired condition with a high probability of resulting in
13 developmental disability as defined in subdivision (a) if services
14 are not provided.

15 (26) "Director" means the director of the department or his or
16 her designee.

17 (27) "Discharge" means an absolute, unconditional release of
18 an individual from a facility by action of the facility or a court.

19 (28) "Eligible minor" means an individual less than 18 years
20 of age who is recommended in the written report of a
21 multidisciplinary team under rules promulgated by the department of
22 education to be classified as 1 of the following:

23 (a) Severely mentally impaired.

24 (b) Severely multiply impaired.

25 (c) Autistic impaired and receiving special education services
26 in a program designed for the autistic impaired under subsection
27 (1) of R 340.1758 of the Michigan ~~administrative code~~

1 **ADMINISTRATIVE CODE** or in a program designed for the severely
2 mentally impaired or severely multiply impaired.

3 (29) "Emergency situation" means a situation in which an
4 individual is experiencing a serious mental illness or a
5 developmental disability, or a minor is experiencing a serious
6 emotional disturbance, and 1 of the following applies:

7 (a) The individual can reasonably be expected within the near
8 future to physically injure himself, herself, or another
9 individual, either intentionally or unintentionally.

10 (b) The individual is unable to provide himself or herself
11 food, clothing, or shelter or to attend to basic physical
12 activities such as eating, toileting, bathing, grooming, dressing,
13 or ambulating, and this inability may lead in the near future to
14 harm to the individual or to another individual.

15 (c) The individual has mental illness that has impaired his or
16 her judgment so that the individual is unable to understand his or
17 her need for treatment, and that impaired judgment, on the basis of
18 competent clinical opinion, presents a substantial risk of
19 significant physical or mental harm to the individual in the near
20 future or presents a substantial risk of significant physical harm
21 to others in the near future.

22 (30) "Executive director" means an individual appointed under
23 section 226 to direct a community mental health services program or
24 his or her designee.

25 Sec. 400. As used in this chapter, unless the context requires
26 otherwise:

27 (a) "Clinical certificate" means the written conclusion and

1 statements of a physician or a licensed psychologist that an
2 individual is a person requiring treatment, together with the
3 information and opinions, in reasonable detail, that underlie the
4 conclusion, on the form prescribed by the department or on a
5 substantially similar form.

6 (b) "Competent clinical opinion" means the clinical judgment
7 of a physician, psychiatrist, or licensed psychologist.

8 (c) "Court" means the probate court or the court with
9 responsibility with regard to mental health services for the county
10 of residence of the subject of a petition, or for the county in
11 which the subject of a petition was found.

12 (d) "Formal voluntary hospitalization" means hospitalization
13 of an individual based on both of the following:

14 (i) The execution of an application for voluntary
15 hospitalization by the individual or by a patient advocate
16 designated under the estates and protected individuals code, 1998
17 PA 386, MCL 700.1101 to ~~700.8102~~, **700.8206**, to make mental health
18 treatment decisions for the individual.

19 (ii) The hospital director's determination that the individual
20 is clinically suitable for voluntary hospitalization.

21 (e) "Informal voluntary hospitalization" means hospitalization
22 of an individual based on all of the following:

23 (i) The individual's request for hospitalization.

24 (ii) The hospital director's determination that the individual
25 is clinically suitable for voluntary hospitalization.

26 (iii) The individual's agreement to accept treatment.

27 (f) "Involuntary mental health treatment" means court-ordered

1 hospitalization, alternative treatment, or combined hospitalization
2 and alternative treatment as described in section 468. **FOR THE**
3 **PURPOSE OF THIS CHAPTER, INVOLUNTARY MENTAL HEALTH TREATMENT DOES**
4 **NOT INCLUDE A FULL OR LIMITED GUARDIAN AUTHORIZED UNDER THE ESTATES**
5 **AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL 700.1101 TO**
6 **700.8206, WITH THE AUTHORITY TO CONSENT TO MENTAL HEALTH TREATMENT**
7 **FOR AN INDIVIDUAL FOUND TO BE A LEGALLY INCAPACITATED INDIVIDUAL**
8 **UNDER THE ESTATES AND PROTECTED INDIVIDUALS CODE, 1998 PA 386, MCL**
9 **700.1101 TO 700.8206.**

10 (g) "Mental illness" means a substantial disorder of thought
11 or mood that significantly impairs judgment, behavior, capacity to
12 recognize reality, or ability to cope with the ordinary demands of
13 life.

14 (h) "Preadmission screening unit" means a service component of
15 a community mental health services program established under
16 section 409.

17 (i) "Private-pay patient" means a patient whose services and
18 care are paid for from funding sources other than the community
19 mental health services program, the department, or other state or
20 county funding.

21 (j) "Release" means the transfer of an individual who is
22 subject to an order of combined hospitalization and alternative
23 treatment from 1 treatment program to another in accordance with
24 his or her individual plan of services.

25 (k) "Subject of a petition" means an individual regarding whom
26 a petition has been filed with the court asserting that the
27 individual is or is not a person requiring treatment or for whom an

1 objection to involuntary mental health treatment has been made
2 under section 484.

3 Sec. 415. Subject to section 410, an individual 18 years of
4 age or over may be hospitalized **OR OTHERWISE TREATED** as a formal
5 voluntary patient if ~~the~~ **EITHER OF THE FOLLOWING APPLIES:**

6 **(A) THE** individual executes ~~an application~~ **A WRITTEN CONSENT**
7 **WITH THE MENTAL HEALTH FACILITY** for hospitalization ~~MENTAL HEALTH~~
8 **TREATMENT** as a formal voluntary patient. ~~or the individual assents~~
9 ~~and the~~

10 **(B) THE** full ~~guardian of the individual, the~~ **OR** limited
11 guardian with authority to ~~admit,~~ **EXECUTE A WRITTEN CONSENT TO**
12 **MENTAL HEALTH TREATMENT,** or a patient advocate authorized by the
13 individual to make mental health treatment decisions under the
14 estates and protected individuals code, 1998 PA 386, MCL 700.1101
15 to 700.8102, ~~executes an application for hospitalization and if the~~
16 ~~hospital director considers the individual to be clinically~~
17 ~~suitable for that form of hospitalization.~~ **700.8206, EXECUTES A**
18 **WRITTEN CONSENT TO PROVIDE MENTAL HEALTH TREATMENT.**

19 Sec. 416. ~~The formal application shall contain in large type~~
20 ~~and simple language the substance of sections 419 and 420. Upon~~
21 ~~hospitalization,~~ **COMMENCEMENT OF MENTAL HEALTH TREATMENT,** the
22 ~~rights set forth in the application shall~~ **THAT THE PATIENT HAS**
23 **DURING THE MENTAL HEALTH TREATMENT, INCLUDING THE RIGHT TO OBJECT**
24 **TO THE MENTAL HEALTH TREATMENT, MUST** be orally communicated to the
25 patient and to the individual who executed the ~~application.~~ **WRITTEN**
26 **CONSENT.** In addition, a copy of the ~~application shall~~ **WRITTEN**
27 **CONSENT MUST** be given to the patient and the individual who

1 executed the ~~application~~ **WRITTEN CONSENT** and to 1 other individual
2 designated by the patient.

3 Sec. 419. (1) Except as is provided in section 420, a formal
4 voluntary patient 18 years of age or over shall not be hospitalized
5 **OR PROVIDED MENTAL HEALTH TREATMENT FOR** more than 3 days, excluding
6 Sundays and holidays, after the patient, **THE FULL OR LIMITED**
7 **GUARDIAN WITH AUTHORITY TO CONSENT TO MENTAL HEALTH TREATMENT, OR A**
8 **PATIENT ADVOCATE AUTHORIZED BY THE INDIVIDUAL TO MAKE MENTAL HEALTH**
9 **TREATMENT DECISIONS UNDER THE ESTATES AND PROTECTED INDIVIDUALS**
10 **CODE, 1998 PA 386, MCL 700.1101 TO 700.8206,** gives written notice
11 of an intention to terminate ~~his or her hospitalization and leave~~
12 ~~the hospital.~~ **THE PATIENT'S MENTAL HEALTH TREATMENT.**

13 (2) When the hospital **OR PROVIDER OF MENTAL HEALTH TREATMENT**
14 is told of an intention to terminate ~~hospitalization~~ **MENTAL HEALTH**
15 **TREATMENT** under subsection (1), it shall promptly supply the
16 written form ~~which~~ **THAT** is required.

17 Sec. 420. If a written notice of termination of
18 ~~hospitalization~~ **MENTAL HEALTH TREATMENT** is given to a hospital **OR**
19 **PROVIDER OF MENTAL HEALTH TREATMENT** under section 419, if the
20 notice is not withdrawn, and if the hospital director **OR PROVIDER**
21 **OF MENTAL HEALTH TREATMENT** determines that the patient is a person
22 requiring treatment and should remain in the hospital **OR CONTINUE**
23 **TO RECEIVE MENTAL HEALTH TREATMENT,** the hospital director, **PROVIDER**
24 **OF MENTAL HEALTH TREATMENT,** or other suitable person shall within 3
25 days after ~~the hospital's~~ receipt of the notice ~~—~~ file a petition
26 with the court that complies with section 434. The petition shall
27 be accompanied by 1 clinical certificate executed by a psychiatrist

1 and 1 clinical certificate executed by either a physician or a
2 licensed psychologist. If a petition is filed, the hospital **OR**
3 **PROVIDER OF MENTAL HEALTH** may continue hospitalization **OR MENTAL**
4 **HEALTH TREATMENT** of the patient pending hearings convened under
5 sections 451 to 465.

6 Enacting section 1. This amendatory act takes effect 90 days
7 after the date it is enacted into law.

8 Enacting section 2. This amendatory act does not take effect
9 unless Senate Bill No. _____ or House Bill No. 5818 (request no.
10 03397'17) of the 99th Legislature is enacted into law.