

Act No. 595  
Public Acts of 2018  
Approved by the Governor  
December 28, 2018  
Filed with the Secretary of State  
December 28, 2018  
EFFECTIVE DATE: March 28, 2019

**STATE OF MICHIGAN  
99TH LEGISLATURE  
REGULAR SESSION OF 2018**

Introduced by Reps. Kesto, Vaupel and Guerra

# **ENROLLED HOUSE BILL No. 5819**

AN ACT to amend 1974 PA 258, entitled “An act to codify, revise, consolidate, and classify the laws relating to mental health; to prescribe the powers and duties of certain state and local agencies and officials and certain private agencies and individuals; to regulate certain agencies and facilities providing mental health or substance use disorder services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness, substance use disorder, or developmental disability; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness, substance use disorder, or developmental disability who are in the criminal justice system; to provide for penalties and remedies; and to repeal acts and parts of acts,” 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:*

Sec. 100a. (1) “Abilities” means the qualities, skills, and competencies of an individual that reflect the individual’s talents and acquired proficiencies.

(2) “Abuse” means nonaccidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital or by an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

(3) “Adaptive skills” means skills in 1 or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- (d) Social skills.
- (e) Community use.
- (f) Self-direction.
- (g) Health and safety.
- (h) Functional academics.
- (i) Leisure.
- (j) Work.

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

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

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

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

(8) “Assisted outpatient treatment” or “AOT” means the categories of outpatient services ordered by the court under section 468 or 469a. Assisted outpatient treatment may include a case management plan and case management services to provide care coordination under the supervision of a psychiatrist and developed in accordance with person-centered planning under section 712. Assisted outpatient treatment may also include 1 or more of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; vocational, educational, or self-help training or activities; assertive community treatment team services; alcohol or substance use disorder treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol abuse or substance use disorder; supervision of living arrangements; and any other services within a local or unified services plan developed under this act that are prescribed to treat the individual’s mental illness and to assist the individual in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide, the need for hospitalization, or serious violent behavior. The medical review and direction included in an assisted outpatient treatment plan shall be provided under the supervision of a psychiatrist.

(9) “Board” means the governing body of a community mental health services program.

(10) “Board of commissioners” means a county board of commissioners.

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

(12) “Certification” means formal approval of a program by the department in accordance with standards developed or approved by the department.

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

(14) “Child and adolescent psychiatrist” means 1 or more of the following:

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

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

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

(15) “Children’s diagnostic and treatment service” means a program operated by or under contract with a community mental health services program, that provides examination, evaluation, and referrals for minors, including emergency referrals, that provides or facilitates treatment for minors, and that has been certified by the department.

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

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

(18) “Community mental health services program” means a program operated under chapter 2 as a county community mental health agency, a community mental health authority, or a community mental health organization.

(19) “Consent” means a written agreement executed by a recipient, a minor recipient’s parent, 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 part 217 of the public health code, 1978 PA 368, MCL 333.21701 to 333.21799e.

(c) A home for the aged licensed under part 213 of the public health code, 1978 PA 368, MCL 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.

(C) Learning.

(D) Mobility.

(E) Self-direction.

(F) Capacity for independent living.

(G) Economic self-sufficiency.

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

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

(26) “Director” means the director of the department or his or her designee.

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

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

(a) Severely mentally impaired.

(b) Severely multiply impaired.

(c) Autistic impaired and receiving special education services in a program designed for the autistic impaired under subsection (1) of R 340.1758 of the Michigan Administrative Code or in a program designed for the severely mentally impaired or severely multiply impaired.

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

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

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

(c) The individual has mental illness that has impaired his or her judgment so that the individual is unable to understand his or her need for treatment and presents a risk of harm.

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

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

(a) “Clinical certificate” means the written conclusion and statements of a physician or a licensed psychologist that an individual is a person requiring treatment, together with the information and opinions, in reasonable detail, that underlie the conclusion, on the form prescribed by the department or on a substantially similar form.

(b) “Competent clinical opinion” means the clinical judgment of a physician, psychiatrist, or licensed psychologist.

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

(d) “Formal voluntary hospitalization” means hospitalization of an individual based on both of the following:

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

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

(e) “Informal voluntary hospitalization” means hospitalization of an individual based on all of the following:

(i) The individual’s request for hospitalization.

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

(iii) The individual’s agreement to accept treatment.

(f) “Involuntary mental health treatment” means court-ordered hospitalization, assisted outpatient treatment, or combined hospitalization and assisted outpatient treatment as described in section 468. For the purpose of this chapter, involuntary mental health treatment does not include 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 to mental health treatment for an individual found to be a legally incapacitated individual under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

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

(h) “Preadmission screening unit” means a service component of a community mental health services program established under section 409.

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

(j) “Release” means the transfer of an individual who is subject to an order of combined hospitalization and assisted outpatient treatment from 1 treatment program to another in accordance with his or her individual plan of services.

(k) “Subject of a petition” means an individual regarding whom a petition has been filed with the court asserting that the individual is or is not a person requiring treatment or for whom an objection to involuntary mental health treatment has been made under section 484.

Sec. 415. Subject to section 410, an individual 18 years of age or over may be hospitalized or otherwise treated as a formal voluntary patient if either of the following applies:

(a) The individual executes a written consent with the mental health facility for mental health treatment as a formal voluntary patient.

(b) The full or limited guardian with authority to execute a written consent to mental health treatment, or a patient advocate authorized by the individual to make mental health treatment decisions under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, executes a written consent to provide mental health treatment.

Sec. 416. Upon commencement of mental health treatment, the rights that the patient has during the mental health treatment, including the right to object to the mental health treatment, must be orally communicated to the patient and to the individual who executed the written consent. In addition, a copy of the written consent must be given to the patient and the individual who executed the written consent and to 1 other individual designated by the patient.

Sec. 419. (1) Except as is provided in section 420, a formal voluntary patient 18 years of age or over shall not be hospitalized or provided mental health treatment for more than 3 days, excluding Sundays and holidays, after the patient, the full or limited guardian with authority to consent to mental health treatment, or a patient advocate authorized by the individual to make mental health treatment decisions under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206, gives written notice of an intention to terminate the patient’s mental health treatment.

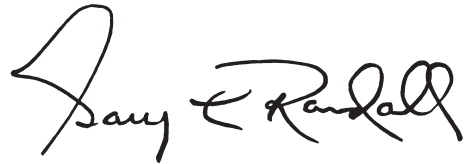
(2) When the hospital or provider of mental health treatment is told of an intention to terminate mental health treatment under subsection (1), it shall promptly supply the written form that is required.

Sec. 420. If a written notice of termination of mental health treatment is given to a hospital or provider of mental health treatment under section 419, if the notice is not withdrawn, and if the hospital director or provider of mental health treatment determines that the patient is a person requiring treatment and should remain in the hospital or continue to receive mental health treatment, the hospital director, provider of mental health treatment, or other suitable person shall within 3 days after receipt of the notice file a petition with the court that complies with section 434. The petition shall be accompanied by 1 clinical certificate executed by a psychiatrist and 1 clinical certificate executed by either a physician or a licensed psychologist. If a petition is filed, the hospital or provider of mental health may continue hospitalization or mental health treatment of the patient pending hearings convened under sections 451 to 465.

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

Enacting section 2. This amendatory act does not take effect unless House Bill No. 5818 of the 99th Legislature is enacted into law.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor