

Act No. 285  
Public Acts of 2020  
Approved by the Governor  
December 29, 2020  
Filed with the Secretary of State  
December 29, 2020  
EFFECTIVE DATE: March 24, 2021

**STATE OF MICHIGAN  
100TH LEGISLATURE  
REGULAR SESSION OF 2020**

Introduced by Rep. Whiteford

## **ENROLLED HOUSE BILL No. 5298**

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 100b and 100c (MCL 330.1100b and 330.1100c), section 100b as amended by 2020 PA 55 and section 100c as amended by 2020 PA 99, and by adding section 137a.

*The People of the State of Michigan enact:*

Sec. 100b. (1) Except as otherwise provided in this subsection, “facility” means a residential facility for the care or treatment of individuals with serious mental illness, serious emotional disturbance, or developmental disability that is either a state facility or a licensed facility. Facility includes a preadmission screening unit established under section 409 that is operating a crisis stabilization unit.

(2) “Family” as used in sections 156 to 161 means an eligible minor and his or her parent or legal guardian.

(3) “Family member” means a parent, stepparent, spouse, sibling, child, or grandparent of a primary consumer, or an individual whom a primary consumer is dependent on for at least 50% of his or her financial support.

(4) “Federal funds” means funds received from the federal government under a categorical grant or similar program and does not include federal funds received under a revenue sharing arrangement.

(5) “Functional impairment” means both of the following:

(a) With regard to serious emotional disturbance, substantial interference with or limitation of a minor’s achievement or maintenance of 1 or more developmentally appropriate social, behavioral, cognitive, communicative, or adaptive skills.

(b) With regard to serious mental illness, substantial interference or limitation of role functioning in 1 or more major life activities including basic living skills such as eating, bathing, and dressing; instrumental living skills such as maintaining a household, managing money, getting around the community, and taking prescribed medication; and functioning in social, vocational, and educational contexts.

(6) “Guardian” means a person appointed by the court to exercise specific powers over an individual who is a minor, legally incapacitated, or developmentally disabled.

(7) “Hospital” or “psychiatric hospital” means an inpatient program operated by the department for the treatment of individuals with serious mental illness or serious emotional disturbance or a psychiatric hospital or psychiatric unit licensed under section 137.

(8) “Hospital director” means the chief administrative officer of a hospital or his or her designee.

(9) “Hospitalization” or “hospitalize” means to provide treatment for an individual as an inpatient in a hospital.

(10) “Incapacitated” means that an individual, as a result of the use of alcohol or other drugs, is unconscious or has his or her mental or physical functioning so impaired that he or she either poses an immediate and substantial danger to his or her own health and safety or is endangering the health and safety of the public.

(11) “Individual plan of services” or “plan of services” means a written individual plan of services developed with a recipient as required by section 712.

(12) “Individual representative” means a recipient’s legal guardian, minor recipient’s parent, or other person authorized by law to represent the recipient in decision-making related to the recipient’s services and supports.

(13) “Intellectual disability” means a condition manifesting before the age of 18 years that is characterized by significantly subaverage intellectual functioning and related limitations in 2 or more adaptive skills and that is diagnosed based on the following assumptions:

(a) Valid assessment considers cultural and linguistic diversity, as well as differences in communication and behavioral factors.

(b) The existence of limitation in adaptive skills occurs within the context of community environments typical of the individual’s age peers and is indexed to the individual’s particular needs for support.

(c) Specific adaptive skill limitations often coexist with strengths in other adaptive skills or other personal capabilities.

(d) With appropriate supports over a sustained period, the life functioning of the individual with an intellectual disability will generally improve.

(14) “Licensed facility” means a facility licensed by the department under section 137 or an adult foster care facility.

(15) “Licensed psychologist” means a doctoral level psychologist licensed under section 18223(1) of the public health code, 1978 PA 368, MCL 333.18223.

(16) “Mediation” means a confidential process in which a neutral third party facilitates communication between parties, assists in identifying issues, and helps explore solutions to promote a mutually acceptable resolution. A mediator does not have authoritative decision-making power.

(17) “Medicaid” means the program of medical assistance established under section 105 of the social welfare act, 1939 PA 280, MCL 400.105.

(18) “Medical director” means a psychiatrist appointed under section 231 to advise the executive director of a community mental health services program.

(19) “Mental health professional” means an individual who is trained and experienced in the area of mental illness or developmental disabilities and who is 1 of the following:

(a) A physician.

(b) A psychologist.

(c) A registered professional nurse licensed or otherwise authorized to engage in the practice of nursing under part 172 of the public health code, 1978 PA 368, MCL 333.17201 to 333.17242.

(d) A licensed master’s social worker licensed or otherwise authorized to engage in the practice of social work at the master’s level under part 185 of the public health code, 1978 PA 368, MCL 333.18501 to 333.18518.

(e) A licensed professional counselor licensed or otherwise authorized to engage in the practice of counseling under part 181 of the public health code, 1978 PA 368, MCL 333.18101 to 333.18117.

(f) A marriage and family therapist licensed or otherwise authorized to engage in the practice of marriage and family therapy under part 169 of the public health code, 1978 PA 368, MCL 333.16901 to 333.16915.

(20) “Minor” means an individual under the age of 18 years.

(21) “Multicultural services” means specialized mental health services for multicultural populations such as African-Americans, Hispanics, Native Americans, Asian and Pacific Islanders, and Arab/Chaldean-Americans.

(22) “Neglect” means an act or failure to act committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital; a service provider under contract with the department, a community mental health services program, or a licensed hospital; or an employee or volunteer of a service provider under contract with the department, a community mental health services program, or a licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

Sec. 100c. (1) “Peace officer” means an officer of the department of state police or of a law enforcement agency of a county, township, city, or village who is responsible for preventing and detecting crime and enforcing the criminal laws of this state. For the purposes of sections 408, 426, 427a, and 427b, peace officer also includes an officer of the United States Secret Service with the officer’s consent and a police officer of the Veterans’ Administration Medical Center Reservation.

(2) “Peer review” means a process, including the review process required under section 143a, in which mental health professionals of a state facility, licensed hospital, or community mental health services program evaluate the clinical competence of staff and the quality and appropriateness of care provided to recipients. Peer review evaluations are confidential in accordance with section 748(9) and are based on criteria established by the facility or community mental health services program itself, the accepted standards of the mental health professions, and the department.

(3) “Person requiring treatment” means an individual who meets the criteria described in section 401.

(4) “Physician” means an individual licensed or otherwise authorized to engage in the practice of medicine under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17097, or to engage in the practice of osteopathic medicine and surgery under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(5) “Primary consumer” means an individual who has received or is receiving services from the department or a community mental health services program or services from the private sector equivalent to those offered by the department or a community mental health services program.

(6) “Priority” means preference for and dedication of a major proportion of resources to specified populations or services. Priority does not mean serving or funding the specified populations or services to the exclusion of other populations or services.

(7) “Protective custody” means the temporary custody of an individual by a peace officer with or without the individual’s consent for the purpose of protecting that individual’s health and safety, or the health and safety of the public, and for the purpose of transporting the individual under section 276, 408, or 427 if the individual appears, in the judgment of the peace officer, to be a person requiring treatment or is a person requiring treatment. Protective custody is civil in nature and is not an arrest.

(8) “Psychiatric residential treatment facility” or “PRTF” means a facility other than a hospital that provides psychiatric services, as described in 42 CFR 441.151 to 441.182, in an inpatient setting to individuals under age 21.

(9) “Psychiatric unit” means a unit of a general hospital that provides inpatient services for individuals with serious mental illness or serious emotional disturbance. As used in this subsection, “general hospital” means a hospital as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(10) “Psychiatrist” means 1 or more of the following:

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

(b) A psychiatrist employed by or under contract with the department or a community mental health services program on March 28, 1996.

(c) A physician who devotes a substantial portion of his or her time to the practice of psychiatry and is approved by the director.

(11) “Psychologist” means an individual who is licensed or otherwise authorized to engage in the practice of psychology under part 182 of the public health code, 1978 PA 368, MCL 333.18201 to 333.18237, and who devotes a substantial portion of his or her time to the diagnosis and treatment of individuals with serious mental illness, serious emotional disturbance, substance use disorder, or developmental disability.

(12) “Public patient” means an individual approved for mental health services by a community mental health services program. Public patient includes an individual who is admitted as a patient under section 423, 429, or 438.

(13) “Recipient” means an individual who receives mental health services, either in person or through telemedicine, from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program. For the purposes of this act, recipient does not include an individual receiving substance use disorder services under chapter 2A unless that individual is also receiving mental health services under this act in conjunction with substance use disorder services.

(14) “Recipient rights advisory committee” means a committee of a community mental health services program board appointed under section 757 or a recipient rights advisory committee appointed by a licensed hospital under section 758.

(15) “Recovery” means a highly individualized process of healing and transformation by which the individual gains control over his or her life. Related services include recovery management, recovery support services, recovery houses or transitional living programs, and relapse prevention. Recovery involves the development of a new meaning, purpose, and growing beyond the impact of addiction or a diagnosis. Recovery may include the pursuit of spiritual, emotional, mental, or physical well-being.

(16) “Regional entity” means an entity established under section 204b to provide specialty services and supports.

(17) “Rehabilitation” means the act of restoring an individual to a state of mental and physical health or useful activity through vocational or educational training, therapy, and counseling.

(18) “Resident” means an individual who receives services in a facility.

(19) “Responsible mental health agency” means the hospital, center, or community mental health services program that has primary responsibility for the recipient’s care or for the delivery of services or supports to that recipient.

(20) “Rule” means a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 137a. (1) The department shall, subject to appropriation of sufficient funding, establish PRTFs for Medicaid recipients under age 21 as described under 42 CFR 441.151 to 441.184.

(2) The department shall select PRTF providers through a request for proposals process. Public or private providers, including, but not limited to, those providing state-operated services, may respond to the request for proposals.

(3) To be eligible for reimbursement from the department, a PRTF must meet all of the following requirements:

(a) Be certified by the department.

(b) Be accredited by the Joint Commission, Commission on Accreditation of Rehabilitation Facilities, or Council on Accreditation.

(c) Be enrolled in the Medicaid Management Information System.

(d) Any other requirement the department considers appropriate and necessary to provide PRTF services and comply with 42 CFR 441.151 to 441.182.

(4) The department may establish a Medicaid policy and promulgate administrative rules necessary to implement this section. When promulgating administrative rules or developing the criteria by which a PRTF will be selected or certified under this section, the department shall consider both of the following:

(a) The geographic need and appropriateness for PRTF services, including, but not limited to, all of the following:

(i) Prioritizing the selection and certification of PRTFs in areas of this state lacking inpatient psychiatric services for individuals under age 21.

(ii) Avoiding concentration of PRTFs in any particular community or area of this state to ensure the easiest possible access for families or guardians to visit patients when appropriate.

(iii) Consideration of the availability of community resources sufficient to support a PRTF and its patients, including, but not limited to, the capacity of public safety and emergency medical response services and proximity to ancillary medical providers.

(b) The capacity of a PRTF to provide care that results in the successful integration of patients back into the community within 60 to 120 days after admission to the PRTF, including a reintegration with family whenever possible and appropriate.

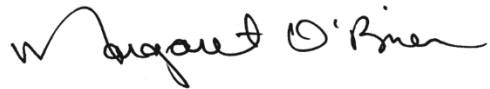
(5) The department shall evaluate each selected PRTF no less than every 2 years based on the criteria developed by the department, including the criteria described in subsection (4)(a) and (b). The department may

revoke the selection and certification of, or take corrective action considered necessary against, any PRTF that is determined to no longer be needed or appropriate under the criteria described in subsection (4)(a) or found not to be in compliance with the criteria described in subsection (4)(b). This subsection does not limit the ability of the department to take corrective action or to revoke the selection or certification of a PRTF for other good cause at any time.



---

Clerk of the House of Representatives



---

Secretary of the Senate

Approved \_\_\_\_\_

---

Governor