

# HOUSE BILL No. 5882

May 21, 1998, Introduced by Rep. Middaugh and referred to the Committee on Mental Health.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending section 748 (MCL 330.1748), as amended by 1996 PA 588.

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

9       (2) ~~If~~ EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (3), IF  
10 information made confidential by this section is disclosed, the

1 identity of the individual to whom it pertains shall be protected  
2 and shall not be disclosed unless it is germane to the authorized  
3 purpose for which disclosure was sought; and, when practicable,  
4 no other information shall be disclosed unless it is germane to  
5 the authorized purpose for which disclosure was sought.

6 (3) IF A PARENT, RELATIVE, OR LEGAL GUARDIAN OF A RECIPIENT  
7 IS DIRECTLY OR INDIRECTLY PAYING FOR THE MENTAL HEALTH SERVICES  
8 BEING PROVIDED TO THE RECIPIENT, THE HOLDER OF INFORMATION  
9 DESCRIBED IN SUBSECTION (1) SHALL, UPON REQUEST OF THE PARENT,  
10 RELATIVE, OR LEGAL GUARDIAN, DISCLOSE THE INFORMATION TO THE  
11 PARENT, RELATIVE, OR LEGAL GUARDIAN AND SHALL DISCUSS THE  
12 RECIPIENT'S COURSE OF TREATMENT WITH THE PARENT, RELATIVE, OR  
13 LEGAL GUARDIAN IF 1 OF THE FOLLOWING REQUIREMENTS IS MET:

14 (A) THE RECIPIENT IS A MINOR.

15 (B) IF THE RECIPIENT IS AN ADULT, DOES NOT HAVE A GUARDIAN,  
16 AND HAS NOT BEEN ADJUDICATED LEGALLY INCOMPETENT, THE RECIPIENT  
17 CONSENTS TO THE DISCLOSURE.

18 (4) ~~(3)~~ An individual receiving information made confiden-  
19 tial by this section shall disclose the information to others  
20 only to the extent consistent with the authorized purpose for  
21 which the information was obtained.

22 (5) ~~(4)~~ For case record entries made ~~subsequent to~~ AFTER  
23 March 28, 1996, information made confidential by this section  
24 shall be disclosed to an adult recipient, upon the recipient's  
25 request, if the recipient does not have a guardian and has not  
26 been adjudicated legally incompetent. The holder of the record  
27 shall comply with the adult recipient's request for disclosure as

1 expeditiously as possible but in no event later than the earlier  
2 of 30 days after receipt of the request or, if the recipient is  
3 receiving treatment from the holder of the record, before the  
4 recipient is released from treatment.

5 (6) ~~(5)~~ Except as otherwise provided in subsection ~~(4)~~,  
6 ~~(6)~~, ~~(7)~~, or ~~(9)~~ (3), (5), (7), (8), OR (10), when requested,  
7 information made confidential by this section shall be disclosed  
8 only under 1 or more of the following circumstances:

9 (a) Pursuant to ~~orders or subpoenas~~ AN ORDER OR SUBPOENA  
10 of a court of record, or ~~subpoenas~~ A SUBPOENA of the legisla-  
11 ture, unless the information is made privileged by law.

12 (b) To a prosecuting attorney as necessary for the prosecut-  
13 ing attorney to participate in a proceeding governed by this  
14 act.

15 (c) To an attorney for the recipient, with the consent of  
16 the recipient, TO the recipient's guardian with authority to con-  
17 sent, or TO the parent with legal and physical custody of a minor  
18 recipient.

19 (d) If necessary in order to comply with another provision  
20 of law.

21 (e) To the department if the information is necessary in  
22 order for the department to discharge a responsibility placed  
23 upon it by law.

24 (f) To the office of the auditor general if the information  
25 is necessary for that office to discharge its constitutional  
26 responsibility.

1 (g) To a surviving spouse of the recipient or, if there is  
2 no surviving spouse, to the individual or individuals most  
3 closely related to the deceased recipient within the third degree  
4 of consanguinity as defined in civil law, for the purpose of  
5 applying for and receiving benefits.

6 (7) ~~(6)~~ Except as otherwise provided in subsection ~~(4)~~  
7 (5), if consent is obtained from the recipient, FROM the  
8 recipient's guardian with authority to consent, FROM the parent  
9 with legal custody of a minor recipient, or FROM the  
10 court-appointed personal representative or executor of the estate  
11 of a deceased recipient, information made confidential by this  
12 section may be disclosed to ~~all~~ 1 OR MORE of the following:

13 (a) Providers of mental health services to the recipient.

14 (b) The recipient or his or her guardian or the parent of a  
15 minor recipient or any other individual or agency, unless in the  
16 written judgment of the holder OF THE INFORMATION the disclosure  
17 would be detrimental to the recipient or others.

18 (8) ~~(7)~~ Information DESCRIBED IN SUBSECTION (1) may be  
19 disclosed in the discretion of the holder of the record:

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

22 (b) As necessary for the purpose of outside research, evalu-  
23 ation, accreditation, or statistical compilation, ~~provided that~~  
24 IF the individual who is the subject of the information can be  
25 identified from the disclosed information only if ~~such~~ THE  
26 identification is essential in order to achieve the purpose for  
27 which the information is sought or if preventing ~~such~~ THE

1 identification would clearly be impractical, but in no event if  
2 the subject of the information is likely to be harmed by the  
3 identification.

4 (c) To providers of mental or other health services or a  
5 public agency, if there is a compelling need for disclosure based  
6 upon a substantial probability of harm to the recipient or other  
7 individuals.

8 (9) ~~(8)~~ If required by federal law, the department or a  
9 community mental health services program or A licensed facility  
10 shall grant a representative of the protection and advocacy  
11 system designated by the governor in compliance with section 931  
12 access to the records of ~~all~~ EACH of the following:

13 (a) A recipient, if the recipient, the recipient's guardian  
14 with authority to consent, or a minor recipient's parent with  
15 legal and physical custody of the recipient has consented to the  
16 access.

17 (b) A recipient, including a recipient who has died or whose  
18 whereabouts are unknown, if all of the following apply:

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

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

23 (iii) The protection and advocacy system has received a com-  
24 plaint on behalf of the recipient or has probable cause to  
25 believe based on monitoring or other evidence that the recipient  
26 has been subject to abuse or neglect.

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

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

6 (ii) Upon receipt of the name and address of the recipient's  
7 legal representative, the protection and advocacy system has con-  
8 tacted the representative and offered assistance in resolving the  
9 situation.

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

12 (10) ~~(9)~~ The records, data, and knowledge collected for or  
13 by individuals or committees assigned a peer review function,  
14 including the review function under section 143a(1), are confi-  
15 dential, shall be used only for the purposes of peer review, are  
16 not public records, and are not subject to court subpoena. This  
17 subsection does not prevent disclosure of individual case records  
18 pursuant to this section.

19 (11) ~~(10)~~ The holder of an individual's record, ~~when~~ IF  
20 authorized to release information for clinical purposes by the  
21 individual or BY the individual's guardian or a parent of a  
22 minor, shall release a copy of the entire medical and clinical  
23 record to the provider of mental health services.

24 (12) AS USED IN SUBSECTION (3), "RELATIVE" MEANS A CHILD,  
25 SIBLING, SPOUSE, FATHER-IN-LAW, MOTHER-IN-LAW, SON-IN-LAW,  
26 DAUGHTER-IN-LAW, BROTHER-IN-LAW, SISTER-IN-LAW, NIECE, NEPHEW,  
27 UNCLE, AUNT, GRANDCHILD, OR GRANDPARENT.