

# HOUSE BILL No. 6074

May 7, 2008, Introduced by Reps. McDowell, Meisner, Miller, Kathleen Law, Amos, Simpson, Leland, Robert Jones, Vagnozzi, Jackson, Young, Byrnes, Rick Jones, Green, Polidori, Gonzales, Garfield, Wenke, Meadows, Alma Smith and Clack 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~~ **IS** confidential and ~~shall~~ **IS**  
4 not ~~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.

1           (2) If information made confidential by this section is  
2 disclosed, the identity of the individual to whom it pertains shall  
3 be protected and shall not be disclosed unless it is germane to the  
4 authorized purpose for which disclosure was sought. ~~and, when~~ **IF**  
5 practicable, no other information shall be disclosed unless it is  
6 germane to the authorized purpose for which disclosure was sought.

7           (3) An individual receiving information made confidential by  
8 this section shall disclose the information to others only to the  
9 extent consistent with the authorized purpose for which the  
10 information was obtained.

11           (4) For case record entries made ~~subsequent to~~ **AFTER** March 28,  
12 1996, information made confidential by this section shall be  
13 disclosed to an adult recipient, upon the recipient's request, if  
14 the recipient does not have a guardian and has not been adjudicated  
15 legally incompetent. The holder of the record shall comply with the  
16 adult recipient's request for disclosure as expeditiously as  
17 possible but in no event later than the earlier of 30 days after  
18 receipt of the request or, if the recipient is receiving treatment  
19 from the holder of the record, before the recipient is released  
20 from treatment.

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

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

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

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

6 (d) If necessary ~~in order~~ to comply with another provision of  
7 law.

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

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

14 (g) ~~To~~ **UNLESS LIMITED BY THE PROVISIONS OF A LEGALLY VALID**  
15 **PSYCHIATRIC ADVANCE DIRECTIVE, TO** a surviving spouse of the  
16 recipient or, if there is no surviving spouse, to the individual or  
17 individuals most closely related to the deceased recipient within  
18 the third degree of consanguinity as defined in civil law; ~~;~~ **EXCEPT**  
19 **THAT A LIMITATION IN A PSYCHIATRIC ADVANCE DIRECTIVE DOES NOT**  
20 **PREVENT A SURVIVING SPOUSE OR QUALIFYING RELATIVE FROM RECEIVING**  
21 **ACCESS TO INFORMATION NEEDED** for the purpose of applying for and  
22 receiving benefits.

23 (6) Except as otherwise provided in subsection (4), if consent  
24 is obtained from the recipient, the recipient's guardian with  
25 authority to consent, the parent with legal custody of a minor  
26 recipient, or the court-appointed personal representative or  
27 executor of the estate of a deceased recipient, information made

1 confidential by this section may be disclosed to all of the  
2 following:

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

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

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

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

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

21 (c) To a provider of mental or other health services or a  
22 public agency, if there is a compelling need for disclosure based  
23 upon a substantial probability of harm to the recipient or other  
24 individuals.

25 (8) If required by federal law, the department or a community  
26 mental health services program or licensed facility shall grant a  
27 representative of the protection and advocacy system designated by

1 the governor in compliance with section 931 access to the records  
2 of all of the following:

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

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

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

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

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

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

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

21 (ii) Upon receipt of the name and address of the recipient's  
22 legal representative, the protection and advocacy system has  
23 contacted the representative and offered assistance in resolving  
24 the situation.

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

27 (9) The records, data, and knowledge collected for or by

1 individuals or committees assigned a peer review function,  
2 including the review function under section 143a(1), are  
3 confidential, shall be used only for the purposes of peer review,  
4 are not public records, and are not subject to court subpoena. This  
5 subsection does not prevent disclosure of individual case records  
6 ~~pursuant to~~ **UNDER** this section.

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