

HOUSE BILL No. 6079

May 7, 2008, Introduced by Reps. Alma Smith, Kathleen Law, Jackson, Young, Byrnes, Green, Gonzales, Clack, Garfield and Wenke and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding section 709.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 709. (1) THE DEPARTMENT SHALL ESTABLISH A POLICY
2 DIRECTIVE ON LOCAL GRIEVANCE PROCEDURES THAT ALL COMMUNITY MENTAL
3 HEALTH SERVICES PROGRAMS SHALL BE REQUIRED TO FOLLOW.

4 (2) THE DEPARTMENT'S POLICY DIRECTIVE SHALL REQUIRE A
5 COMMUNITY MENTAL HEALTH SERVICES PROGRAM TO REACH A DECISION ON A
6 LOCAL GRIEVANCE WITHIN 35 CALENDAR DAYS FROM THE DATE A GRIEVANCE
7 IS FILED BY AN APPLICANT, A RECIPIENT, A GUARDIAN OF AN APPLICANT
8 OR RECIPIENT, OR AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT,
9 RECIPIENT, OR GUARDIAN.

1 (3) IF A MENTAL HEALTH PROFESSIONAL COMMUNICATES ORALLY OR IN
2 WRITING TO A COMMUNITY MENTAL HEALTH SERVICES PROGRAM THAT THE
3 APPLICANT OR RECIPIENT IS EXPERIENCING AN EMERGENCY SITUATION, THE
4 COMMUNITY MENTAL HEALTH SERVICES PROGRAM IS REQUIRED TO REACH A
5 DECISION WITHIN 72 HOURS OF RECEIVING THAT COMMUNICATION.

6 (4) IF THE FILING APPLICANT, RECIPIENT, GUARDIAN, OR
7 AUTHORIZED REPRESENTATIVE IS DISSATISFIED WITH THE DECISION OF THE
8 COMMUNITY MENTAL HEALTH SERVICES PROGRAM UNDER THE LOCAL GRIEVANCE
9 PROCESS, HE OR SHE MAY REQUEST WITHIN 60 CALENDAR DAYS OF THAT
10 DECISION, OR WITHIN 10 CALENDAR DAYS IF THE GRIEVANCE REPRESENTED
11 AN EMERGENCY SITUATION, THAT THE DEPARTMENT ARRANGE FOR AN EXTERNAL
12 REVIEW OF THE GRIEVANCE IF BOTH OF THE FOLLOWING APPLY:

13 (A) THE GRIEVANCE INVOLVES A COMMUNITY MENTAL HEALTH SERVICES
14 PROGRAM DETERMINATION THAT AN ADMISSION, AVAILABILITY OF CARE,
15 CONTINUED STAY, OR OTHER SPECIALTY MENTAL HEALTH SERVICE OR SUPPORT
16 IS DENIED, REDUCED, SUSPENDED, OR TERMINATED DUE TO LACK OF MEDICAL
17 NECESSITY.

18 (B) THE APPLICANT OR RECIPIENT DOES NOT HAVE LEGAL RECOURSE TO
19 PARTICIPATE IN THE MEDICAID FAIR HEARING PROCESS REGARDING THE
20 DETERMINATION OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

21 (5) UPON RECEIPT OF A REQUEST FOR AN EXTERNAL REVIEW, THE
22 DEPARTMENT SHALL PROVIDE WRITTEN NOTIFICATION OF RECEIPT TO THE
23 INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

24 (6) NOT LATER THAN 5 BUSINESS DAYS AFTER RECEIVING A REQUEST
25 FOR AN EXTERNAL REVIEW, OR NOT LATER THAN 24 HOURS IF THE GRIEVANCE
26 REPRESENTED AN EMERGENCY SITUATION, THE DEPARTMENT SHALL DETERMINE
27 WHETHER EXTERNAL REVIEW IS WARRANTED. THE PERSON FILING THE

1 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM
2 SHALL RECEIVE WRITTEN NOTIFICATION OF THE DETERMINATION ACCORDING
3 TO 1 OF THE FOLLOWING:

4 (A) IF EXTERNAL REVIEW IS NOT WARRANTED, THE DEPARTMENT SHALL
5 ATTEMPT TO MEDIATE THE DISAGREEMENT BETWEEN THE PERSON FILING THE
6 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
7 PROGRAM.

8 (B) IF EXTERNAL REVIEW IS WARRANTED AND THE SERVICE IN
9 QUESTION IS SOLELY OR PRIMARILY OF A TREATMENT NATURE, THE
10 DEPARTMENT SHALL ARRANGE FOR THE REVIEW TO BE CONDUCTED BY A
11 PSYCHIATRIST WHO HAS NO EMPLOYMENT, CONTRACTUAL, OR OTHER
12 RELATIONSHIP WITH THE DEPARTMENT OR ANY COMMUNITY MENTAL HEALTH
13 SERVICES PROGRAM.

14 (C) IF EXTERNAL REVIEW IS WARRANTED AND THE SERVICE IN
15 QUESTION IS SOLELY OR PRIMARILY OF A SUPPORT NATURE, THE DEPARTMENT
16 SHALL ARRANGE FOR THE EXTERNAL REVIEW TO BE CONDUCTED BY A MENTAL
17 HEALTH PROFESSIONAL WHO HAS EXPERIENCE WITH THE SERVICE IN
18 QUESTION, AND WHO HAS NO EMPLOYMENT, CONTRACTUAL, OR OTHER
19 RELATIONSHIP WITH THE DEPARTMENT OR ANY COMMUNITY MENTAL HEALTH
20 SERVICES PROGRAM.

21 (7) IN ARRANGING FOR AN EXTERNAL REVIEW, THE DEPARTMENT SHALL
22 FORWARD IMMEDIATELY TO THE EXTERNAL REVIEWER WRITTEN MATERIAL
23 SUBMITTED TO THE DEPARTMENT BY THE PERSON FILING THE GRIEVANCE. THE
24 EXTERNAL REVIEWER MAY REQUEST THAT THE PERSON FILING THE GRIEVANCE
25 PROVIDE ADDITIONAL INFORMATION WITHIN 7 BUSINESS DAYS OR WITHIN 1
26 BUSINESS DAY IF THE GRIEVANCE REPRESENTED AN EMERGENCY SITUATION.

27 (8) UPON RECEIVING NOTIFICATION THAT AN EXTERNAL REVIEW IS TO

1 BE CONDUCTED, THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM
2 HAS 7 BUSINESS DAYS TO PROVIDE THE EXTERNAL REVIEWER WITH ALL
3 DOCUMENTS AND INFORMATION UTILIZED BY THE COMMUNITY MENTAL HEALTH
4 SERVICES PROGRAM IN MAKING ITS LOCAL GRIEVANCE DECISION. IF THE
5 GRIEVANCE REPRESENTED AN EMERGENCY SITUATION, THE MATERIAL SHALL BE
6 PROVIDED WITHIN 1 BUSINESS DAY. INITIAL NOTIFICATION OF THE 1-DAY
7 REQUIREMENT MAY BE VERBAL. FAILURE OF A COMMUNITY MENTAL HEALTH
8 SERVICES PROGRAM TO PROVIDE THE REQUIRED MATERIAL WITHIN THE
9 PRESCRIBED TIME FRAME SHALL RESULT IN THE DEPARTMENT ORDERING AN
10 IMMEDIATE REVERSAL OF THE LOCAL GRIEVANCE DECISION.

11 (9) AN EXTERNAL REVIEWER SHALL MAKE A RECOMMENDATION TO THE
12 DEPARTMENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF INFORMATION
13 UNDER SUBSECTIONS (7) AND (8) OR WITHIN 48 HOURS FROM THE RECEIPT
14 OF THAT INFORMATION IF THE GRIEVANCE REPRESENTED AN EMERGENCY
15 SITUATION.

16 (10) UPON RECEIPT OF A RECOMMENDATION FROM AN EXTERNAL
17 REVIEWER, THE DEPARTMENT SHALL MAKE A BINDING ADMINISTRATIVE
18 DECISION ABOUT THE CASE WITHIN 7 BUSINESS DAYS OR WITHIN 24 HOURS
19 IF THE GRIEVANCE REPRESENTED AN EMERGENCY SITUATION. INITIAL NOTICE
20 OF THE DECISION MAY BE PROVIDED ORALLY TO THE PERSON FILING THE
21 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
22 PROGRAM. IN ALL CASES, BOTH PARTIES SHALL BE PROVIDED WRITTEN
23 NOTIFICATION THAT SHALL MINIMALLY INCLUDE BOTH OF THE FOLLOWING:

24 (A) THE RECOMMENDATION MADE BY THE EXTERNAL REVIEWER AND THE
25 RATIONALE FOR THAT RECOMMENDATION.

26 (B) IF APPLICABLE, THE RATIONALE FOR WHY THE DEPARTMENT DID
27 NOT FOLLOW THE EXTERNAL REVIEWER'S RECOMMENDATION.

1 (11) AT ANY TIME BEFORE THE BINDING ADMINISTRATIVE DECISION
2 FROM THE DEPARTMENT, THE EXTERNAL REVIEW PROCESS IS ABROGATED IF
3 THE PERSON FILING THE GRIEVANCE MAKES A WRITTEN REQUEST FOR
4 WITHDRAWAL OR IF THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
5 PROGRAM PROVIDES WRITTEN NOTIFICATION THAT IT HAS ELECTED TO
6 AUTHORIZE THE ACTION SOUGHT BY THE PERSON FILING THE GRIEVANCE.

7 (12) IN MAKING A DETERMINATION UNDER SUBSECTION (6) OR (10),
8 THE DEPARTMENT MAY CONSIDER ALL INFORMATION IT CONSIDERS RELEVANT,
9 INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

10 (A) THE APPLICANT'S OR RECIPIENT'S DIAGNOSIS, PROGNOSIS, AND
11 CASE HISTORY.

12 (B) THE SEVERITY OF THE APPLICANT'S OR RECIPIENT'S CONDITION
13 AND THE DEGREE TO WHICH THE APPLICANT'S OR RECIPIENT'S
14 CIRCUMSTANCES MEET THE CRITERIA DESCRIBED IN SECTION 208 FOR
15 PRIORITY SERVICES.

16 (C) THE FINANCIAL RESOURCES AVAILABLE TO THE INVOLVED
17 COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

18 (D) THE DEGREE TO WHICH THE COMMUNITY MENTAL HEALTH SERVICES
19 PROGRAM UTILIZED APPROPRIATE PERSON-CENTERED PLANNING PROCEDURES.

20 (E) THE QUALITY OF THE WRITTEN INDIVIDUALIZED PLAN OF SERVICE
21 AND THE DEGREE OF CONSUMER PARTICIPATION IN DEVELOPING IT.

22 (F) THE AVAILABILITY OF THE SERVICE DESIRED BY THE PERSON
23 FILING THE GRIEVANCE.

24 (G) THE EXISTENCE OF CO-OCCURRING MEDICAL CONDITIONS.

25 (H) THE DEGREE OF INVOLVEMENT REQUIRED FROM ANY PROVIDER WHO
26 IS NOT A MENTAL HEALTH HUMAN SERVICE PROVIDER IN ADDRESSING THE
27 SITUATION.

1 (13) THE DEPARTMENT SHALL PROVIDE THE LEGISLATURE ANNUALLY
2 WITH A REPORT FOR EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND
3 THE STATE IN AGGREGATE THAT INCLUDES THE FOLLOWING DETAILS:

4 (A) THE NUMBER OF LOCAL GRIEVANCES FILED, CATEGORIZED
5 ACCORDING TO EMERGENT OR NONEMERGENT STATUS AND WHETHER OR NOT THE
6 PERSON FILING THE GRIEVANCE HAD LEGAL RECOURSE TO THE MEDICAID FAIR
7 HEARING PROCESS.

8 (B) THE NUMBER OF FILED LOCAL GRIEVANCES, CATEGORIZED
9 ACCORDING TO SUBDIVISION (A), IN WHICH AGREEMENT BETWEEN THE
10 PARTIES NEGATED A NEED FOR A LOCAL GRIEVANCE DECISION BY THE
11 COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

12 (C) THE NUMBER OF LOCAL GRIEVANCE DECISIONS, CATEGORIZED
13 ACCORDING TO SUBDIVISION (A), UPHOLDING THE INITIAL DETERMINATION
14 OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

15 (D) THE NUMBER OF LOCAL GRIEVANCE DECISIONS, CATEGORIZED
16 ACCORDING TO EMERGENT OR NONEMERGENT STATUS, RESULTING IN REQUESTS
17 FOR EXTERNAL REVIEW.

18 (E) THE NUMBER OF REQUESTS FOR EXTERNAL REVIEW, CATEGORIZED
19 ACCORDING TO SUBDIVISION (D), THAT WERE NOT HONORED BY THE
20 DEPARTMENT, AND THE OUTCOMES OF THE DEPARTMENT'S MEDIATION EFFORTS
21 FOR THOSE CASES.

22 (F) THE NUMBER OF REQUESTS FOR EXTERNAL REVIEW, CATEGORIZED
23 ACCORDING TO SUBDIVISION (D), HONORED BY THE DEPARTMENT.

24 (G) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
25 TO SUBDIVISION (D), IN WHICH THE COMMUNITY MENTAL HEALTH SERVICES
26 PROGRAM'S FAILURE TO PROVIDE REQUIRED MATERIAL WITHIN PRESCRIBED
27 TIME FRAMES RESULTED IN DEFAULT JUDGMENT FOR THE PERSON FILING THE

1 GRIEVANCE.

2 (H) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
3 TO SUBDIVISION (D), WITHDRAWN BEFORE FINAL ADMINISTRATIVE DECISION
4 AT THE REQUEST OF COMMUNITY MENTAL HEALTH SERVICES PROGRAMS.

5 (I) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
6 TO SUBDIVISION (D), WITHDRAWN BEFORE FINAL ADMINISTRATIVE DECISION
7 AT THE REQUEST OF A PERSON FILING A GRIEVANCE.

8 (J) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
9 TO SUBDIVISION (D), IN WHICH THE EXTERNAL REVIEW RECOMMENDATION
10 RESPECTIVELY FAVORED COMMUNITY MENTAL HEALTH SERVICES PROGRAMS AND
11 PARTIES FILING GRIEVANCES.

12 (K) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
13 TO SUBDIVISION (D), IN WHICH THE DEPARTMENT OVERTURNED THE EXTERNAL
14 REVIEWER RECOMMENDATION, AND THE NUMBERS OF THOSE OVERTURNED
15 EXTERNAL REVIEWER RECOMMENDATIONS THAT RESPECTIVELY FAVORED
16 COMMUNITY MENTAL HEALTH SERVICES PROGRAMS AND PARTIES FILING
17 GRIEVANCES.

18 (14) AS USED IN THIS SECTION:

19 (A) "GRIEVANCE" MEANS A WRITTEN COMMUNICATION FROM OR ON
20 BEHALF OF THE APPLICANT OR RECIPIENT, REFLECTING DISAGREEMENT WITH
21 A COMMUNITY MENTAL HEALTH SERVICES PROGRAM OR ITS PROVIDER NETWORK
22 OVER 1 OR MORE OF THE FOLLOWING:

23 (i) THE DENIAL, REDUCTION, SUSPENSION, OR TERMINATION OF
24 SERVICES.

25 (ii) THE TIMELINESS OF RESPONSES TO REQUESTS FOR SERVICES.

26 (iii) THE CLINICAL, CULTURAL, OR LINGUISTIC APPROPRIATENESS OF
27 SERVICES OFFERED OR RENDERED.

1 (iv) THE AVAILABILITY OF SERVICES OFFERED OR RENDERED.

2 (v) THE PERFORMANCE AND BEHAVIOR OF INDIVIDUAL SERVICE
3 PROVIDERS AND EMPLOYEES.

4 (B) "MEDICAL NECESSITY" MEANS SCREENING, ASSESSMENT, TREATMENT
5 OR SUPPORT THAT IS CONSISTENT WITH GENERALLY ACCEPTED MENTAL HEALTH
6 AND HEALTH CARE PRACTICES, ADDRESSES SYMPTOMS OR THE EXISTENCE OF
7 SERIOUS MENTAL ILLNESS, SERIOUS EMOTIONAL DISTURBANCE,
8 DEVELOPMENTAL DISABILITY, OR SUBSTANCE USE DISORDER, AS WELL AS
9 IMPAIRMENTS IN DAILY FUNCTIONING RELATED TO THESE DISORDERS, AND IS
10 FOR THE PURPOSE OF PREVENTING EITHER THE NEED FOR MORE INTENSIVE
11 LEVELS OF TREATMENT OR RELAPSES AND DETERIORATION OF AN
12 INDIVIDUAL'S MENTAL, EMOTIONAL, DEVELOPMENTAL, OR BEHAVIORAL
13 CONDITION.