

HOUSE BILL NO. 5043

October 08, 2019, Introduced by Reps. Vaupel, Whiteford, Brann, Garrett, Yaroach and Crawford and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending sections 100b and 772 (MCL 330.1100b and 330.1772), section 100b as amended by 2014 PA 200 and section 772 as added by 1995 PA 290, and by adding section 206a; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 100b. (1) "Facility" means a residential facility for the
- 2 care or treatment of individuals with serious mental illness,
- 3 serious emotional disturbance, or developmental disability that is



1 either a state facility or a licensed facility.

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

4 (3) "Family member" means a parent, stepparent, spouse,
5 sibling, child, or grandparent of a primary consumer, or an
6 individual upon whom a primary consumer is dependent for at least
7 50% of his or her financial support.

8 (4) "Federal funds" means funds received from the federal
9 government under a categorical grant or similar program and does
10 not include federal funds received under a revenue sharing
11 arrangement.

12 (5) "Functional impairment" means both of the following:

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

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

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

27 (7) "Hospital" or "psychiatric hospital" means an inpatient
28 program operated by the department for the treatment of individuals
29 with serious mental illness or serious emotional disturbance or a



1 psychiatric hospital or psychiatric unit licensed under section
2 137.

3 (8) "Hospital director" means the chief administrative officer
4 of a hospital or his or her designee.

5 (9) "Hospitalization" or "hospitalize" means to provide
6 treatment for an individual as an inpatient in a hospital.

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

12 (11) "Individual plan of services" or "plan of services" means
13 a written individual plan of services developed with a recipient as
14 required by section 712.

15 (12) **"Individual representative" means a recipient's legal**
16 **guardian, minor recipient's parent, or other person authorized by**
17 **law to represent the recipient in decision-making related to the**
18 **recipient's services and supports.**

19 (13) ~~(12)~~ "Intellectual disability" means a condition
20 manifesting before the age of 18 years that is characterized by
21 significantly subaverage intellectual functioning and related
22 limitations in 2 or more adaptive skills and that is diagnosed
23 based on the following assumptions:

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

27 (b) The existence of limitation in adaptive skills occurs
28 within the context of community environments typical of the
29 individual's age peers and is indexed to the individual's



1 particular needs for support.

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

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

7 **(14)** ~~(13)~~—"Licensed facility" means a facility licensed by the
8 department under section 137 or an adult foster care facility.

9 **(15)** ~~(14)~~—"Licensed psychologist" means a doctoral level
10 psychologist licensed under section 18223(1) of the public health
11 code, 1978 PA 368, MCL 333.18223.

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

17 **(17)** ~~(15)~~—"Medical director" means a psychiatrist appointed
18 under section 231 to advise the executive director of a community
19 mental health services program.

20 **(18)** ~~(16)~~—"Mental health professional" means an individual who
21 is trained and experienced in the area of mental illness or
22 developmental disabilities and who is 1 of the following:

23 (a) A physician.

24 (b) A psychologist.

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

28 (d) A licensed master's social worker licensed or otherwise
29 authorized to engage in the practice of social work at the master's



1 level under part 185 of the public health code, 1978 PA 368, MCL
2 333.18501 to 333.18518.

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

6 (f) A marriage and family therapist licensed or otherwise
7 authorized to engage in the practice of marriage and family therapy
8 under part 169 of the public health code, 1978 PA 368, MCL
9 333.16901 to 333.16915.

10 (19) ~~(17)~~—"Minor" means an individual under the age of 18
11 years.

12 (20) ~~(18)~~—"Multicultural services" means specialized mental
13 health services for multicultural populations such as African-
14 Americans, Hispanics, Native Americans, Asian and Pacific
15 Islanders, and Arab/Chaldean-Americans.

16 (21) ~~(19)~~—"Neglect" means an act or failure to act committed
17 by an employee or volunteer of the department, a community mental
18 health services program, or a licensed hospital; a service provider
19 under contract with the department, a community mental health
20 services program, or a licensed hospital; or an employee or
21 volunteer of a service provider under contract with the department,
22 a community mental health services program, or a licensed hospital,
23 that denies a recipient the standard of care or treatment to which
24 he or she is entitled under this act.

25 **Sec. 206a. (1) A recipient or his or her individual**
26 **representative must be offered an opportunity to request mediation**
27 **to resolve a dispute between the recipient or his or her individual**
28 **representative and the community mental health services program or**
29 **other service provider under contract with the community mental**



1 health services program related to planning and providing services
2 or supports to the recipient.

3 (2) The community mental health services program or service
4 provider shall provide notice to a recipient, or his or her
5 individual representative, of the right to request and access
6 mediation at the time services or supports are initiated and at
7 least annually after that. When the community mental health
8 services program's or service provider's local dispute resolution
9 process, local appeals process, or state Medicaid fair hearing is
10 requested, notification of the right to request mediation must also
11 be provided to the recipient or his or her individual
12 representative.

13 (3) The department must provide funding and directly contract
14 with 1 or more mediation organizations experienced in coordinating
15 statewide case intake and mediation service delivery through local
16 community dispute resolution centers.

17 (4) A mediator must be an individual trained in effective
18 mediation technique and mediator standard of conduct. A mediator
19 must be knowledgeable in the laws, regulations, and administrative
20 practices relating to providing behavioral health services and
21 supports. The mediator must not be involved in any manner with the
22 dispute or with providing services or supports to the recipient.

23 (5) The community mental health services program or service
24 provider described in subsection (2) involved in the dispute must
25 participate in mediation if mediation is requested.

26 (6) A request for mediation must be recorded by a mediation
27 organization, and mediation must begin within 10 business days
28 after the recording. Mediation does not prevent a recipient or his
29 or her individual representative from using another available



1 dispute resolution option, including, but not limited to, the
2 community mental health services program's local dispute resolution
3 process, the local appeals process, the state Medicaid fair
4 hearing, or filing a recipient rights complaint. A mediation
5 organization shall ascertain if an alternative dispute resolution
6 process is currently ongoing and notify the process administrator
7 of the request for mediation. The parties may agree to voluntarily
8 suspend other dispute resolution processes, unless prohibited by
9 law.

10 (7) Mediation must be completed within 30 days after the date
11 the mediation was recorded unless the parties agree in writing to
12 extend the mediation period for up to an additional 30 days. The
13 mediation process must not exceed 60 days.

14 (8) If the dispute is resolved through the mediation process,
15 the mediator shall prepare a legally binding document that includes
16 the terms of the agreement. The document must be signed by the
17 recipient or individual representative and a party with the
18 authority to bind the service provider according to the terms of
19 the agreement. The mediator must provide a copy of the signed
20 document to all parties within 10 business days after the end of
21 the mediation process. The signed document is enforceable in any
22 court of competent jurisdiction in this state.

23 (9) If the dispute is not resolved through the mediation
24 process, the mediator must prepare a document that indicates the
25 dispute could not be resolved. The mediator shall provide a copy of
26 the document to all parties within 10 business days after the end
27 of the mediation process.

28 (10) A contracted mediation organization must provide a report
29 with aggregate data and a summary of outcomes to the department



1 every 6 months, or as the department considers appropriate, to
2 review and evaluate the effectiveness and efficiency of mediation
3 in resolving disputes relating to planning and providing services
4 and supports by the community mental health services program and
5 its service providers.

6 (11) As used in this section, "recording" means a file that
7 has been created after a request for mediation has been made by a
8 recipient or his or her individual representative or received by a
9 community mental health services program or other service provider
10 under contract with the community mental health services program.

11 Sec. 772. As used in this chapter:

12 (a) "Allegation" means an assertion of fact made by an
13 individual that has not yet been proved or supported with evidence.

14 (b) "Appeals committee" means a committee appointed by the
15 director or by the board of a community mental health services
16 program or licensed hospital under section 774.

17 (c) "Appellant" means the recipient, complainant, parent, or
18 guardian who appeals a recipient rights finding or a respondent's
19 action to an appeals committee.

20 (d) "Complainant" means an individual who files a rights
21 complaint.

22 (e) "Investigation" means a detailed inquiry into and
23 systematic examination of an allegation raised in a rights
24 complaint.

25 ~~(f) "Mediation" means a private, informal dispute resolution~~
26 ~~process in which an impartial, neutral individual, in a~~
27 ~~confidential setting, assists parties in reaching their own~~
28 ~~settlement of issues in a dispute and has no authoritative~~
29 ~~decision-making power.~~



1 **(f)** ~~(g)~~—"Office" means all of the following:

2 **(i)** With respect to a rights complaint involving services
3 provided directly by or under contract with the department, unless
4 the provider is a community mental health services program, the
5 state office of recipient rights created under section 754.

6 **(ii)** With respect to a rights complaint involving services
7 provided directly by or under contract with a community mental
8 health services program, the office of recipient rights created by
9 a community mental health services program under section 755.

10 **(iii)** With respect to a rights complaint involving services
11 provided by a licensed hospital, the office of recipient rights
12 created by a licensed hospital under section 755.

13 **(g)** ~~(h)~~—"Rights complaint" means a written or oral statement
14 that meets the requirements of section 776.

15 **(h)** ~~(i)~~—"Respondent" means the service provider that had
16 responsibility at the time of an alleged rights violation for the
17 services with respect to which a rights complaint has been filed.

18 Enacting section 1. Section 788 of mental health code, 1974 PA
19 258, MCL 330.1788, is repealed.

