

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

Introduced by Reps. Vaupel, Whiteford, Brann, Garrett, Yaroch and Crawford

ENROLLED HOUSE BILL No. 5043

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 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:

Sec. 100b. (1) “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.

(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 upon whom a primary consumer is dependent 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) “Medical director” means a psychiatrist appointed under section 231 to advise the executive director of a community mental health services program.

(18) “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.

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

(20) “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.

(21) “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. 206a. (1) A recipient or his or her individual representative must be offered an opportunity to request mediation to resolve a dispute between the recipient or his or her individual representative and the community mental health services program or other service provider under contract with the community mental health services program related to planning and providing services or supports to the recipient.

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

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

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

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

(6) A request for mediation must be recorded by a mediation organization, and mediation must begin within 10 business days after the recording. Mediation does not prevent a recipient or his or her individual representative from using another available dispute resolution option, including, but not limited to, the community mental health services program's local dispute resolution process, the local appeals process, the state Medicaid fair hearing, or filing a recipient rights complaint. A mediation organization shall ascertain if an alternative dispute resolution process is currently ongoing and notify the process administrator of the request for mediation. The parties may agree to voluntarily suspend other dispute resolution processes, unless prohibited by law or precluded by a report of an apparent or suspected violation of rights delineated in chapter 7.

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

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

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

(10) A contracted mediation organization must provide a report with aggregate data and a summary of outcomes to the department every 6 months, or as the department considers appropriate, to review and evaluate the effectiveness and efficiency of mediation in resolving disputes relating to planning and providing services and supports by the community mental health services program and its service providers.

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

Sec. 772. As used in this chapter:

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

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

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

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

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

(f) "Office" means all of the following:

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

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

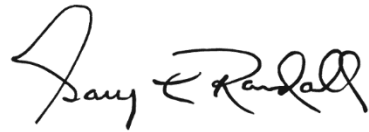
(iii) With respect to a rights complaint involving services provided by a licensed hospital, the office of recipient rights created by a licensed hospital under section 755.

(g) "Rights complaint" means a written or oral statement that meets the requirements of section 776.

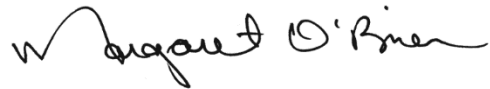
(h) "Respondent" means the service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved _____

Governor