

SENATE BILL No. 867

September 24, 2009, Introduced by Senators BRATER, JACOBS, CLARK-COLEMAN, CLARKE, SCOTT, CHERRY, OLSHOVE, ANDERSON, BASHAM, SWITALSKI and THOMAS and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending sections 754 and 755 (MCL 330.1754 and 330.1755), section 754 as amended by 2006 PA 604 and section 755 as added by 1995 PA 290.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 754. (1) The department shall establish a state office of
2 recipient rights subordinate only to the director.

3 (2) The department shall ensure all of the following:

4 (a) The process for funding the state office of recipient
5 rights includes a review of the funding by the state recipient
6 rights advisory committee.

7 (b) The state office of recipient rights will be protected

1 from pressures that could interfere with the impartial, even-
2 handed, and thorough performance of its duties.

3 (c) The state office of recipient rights will have unimpeded
4 access to all of the following:

5 (i) All programs and services operated by or under contract
6 with the department except where other recipient rights systems
7 authorized by this act exist.

8 (ii) All staff employed by or under contract with the
9 department.

10 (iii) All evidence necessary to conduct a thorough investigation
11 or to fulfill its monitoring function.

12 (d) Staff of the state office of recipient rights receive
13 training each year in recipient rights protection.

14 (e) Each contract between the department and a provider
15 requires both of the following:

16 (i) That the provider and his or her employees receive annual
17 training in recipient rights protection.

18 (ii) That recipients will be protected from rights violations
19 while they are receiving services under the contract.

20 (f) Technical assistance and training in recipient rights
21 protection are available to all community mental health services
22 programs and other mental health service providers subject to this
23 act.

24 (3) The department shall endeavor to ensure all of the
25 following:

26 (a) The state office of recipient rights has sufficient staff
27 and other resources necessary to perform the duties described in

1 this section.

2 (b) Complainants, staff of the state office of recipient
3 rights, and any staff acting on behalf of a recipient will be
4 protected from harassment or retaliation resulting from recipient
5 rights activities.

6 (c) Appropriate remedial action is taken to resolve violations
7 of rights and notify the complainants of substantiated violations
8 in a manner that does not violate employee rights.

9 (4) After consulting with the state recipient rights advisory
10 committee, the department director shall select a director of the
11 state office of recipient rights who has the education, training,
12 and experience to fulfill the responsibilities of the office. The
13 department director shall not replace or dismiss the director of
14 the state office of recipient rights without first consulting the
15 state recipient rights advisory committee. The director of the
16 state office of recipient rights shall have no direct service
17 responsibility. The director of the state office of recipient
18 rights shall report directly and solely to the department director.
19 The department director shall not delegate his or her
20 responsibility under this subsection.

21 (5) The state office of recipient rights may do all of the
22 following:

23 (a) Investigate apparent or suspected violations of the rights
24 guaranteed by this chapter.

25 (b) Resolve disputes relating to violations.

26 (c) Act on behalf of recipients to obtain appropriate remedies
27 for any apparent violations.

1 (d) Apply for and receive grants, gifts, and bequests to
2 effectuate any purpose of this chapter.

3 (6) The state office of recipient rights shall do all of the
4 following:

5 (a) Ensure that recipients, parents of minor recipients, and
6 guardians or other legal representatives have access to summaries
7 of the rights guaranteed by this chapter and chapter 7a and are
8 notified of those rights in an understandable manner, both at the
9 time services are requested and periodically during the time
10 services are provided to the recipient.

11 (b) Ensure that the telephone number and address of the office
12 of recipient rights and the names of rights officers are
13 conspicuously posted in all service sites.

14 (c) Maintain a record system for all reports of apparent or
15 suspected rights violations received, including a mechanism for
16 logging in all complaints and a mechanism for secure storage of all
17 investigative documents and evidence.

18 (d) Initiate actions that are appropriate and necessary to
19 safeguard and protect rights guaranteed by this chapter to
20 recipients of services provided directly by the department or by
21 its contract providers other than community mental health services
22 programs.

23 (e) Receive reports of apparent or suspected violations of
24 rights guaranteed by this chapter. The state office of recipient
25 rights shall refer reports of apparent or suspected rights
26 violations to the recipient rights office of the appropriate
27 provider to be addressed by the provider's internal rights

1 protection mechanisms. The state office shall intervene as
2 necessary to act on behalf of recipients in situations in which the
3 **DEPARTMENT** director ~~of the department~~ considers the rights
4 protection system of the provider to be out of compliance with this
5 act and rules promulgated under this act.

6 (f) Upon request, advise recipients of the process by which a
7 rights complaint or appeal may be made and assist recipients in
8 preparing written rights complaints and appeals.

9 (g) Advise recipients that there are advocacy organizations
10 available to assist recipients in preparing written rights
11 complaints and appeals and offer to refer recipients to those
12 organizations.

13 (h) Upon receipt of a complaint, advise the complainant of the
14 complaint process, appeal process, and mediation option.

15 (i) Ensure that each service site operated by the department
16 or by a provider under contract with the department, other than a
17 community mental health services program, is visited by recipient
18 rights staff with the frequency necessary for protection of rights
19 but in no case less than annually.

20 (j) Ensure that all individuals employed by the department
21 receive department-approved training related to recipient rights
22 protection before or within 30 days after being employed.

23 (k) Ensure that all reports of apparent or suspected
24 violations of rights within state facilities or programs operated
25 by providers under contract with the department other than
26 community mental health services programs are investigated in
27 accordance with section 778 and that those reports that do not

1 warrant investigation are recorded in accordance with subdivision
2 (c).

3 (l) Review semiannual statistical rights data submitted by
4 community mental health services programs and licensed hospitals to
5 determine trends and patterns in the protection of recipient rights
6 in the public mental health system and provide a summary of the
7 data to community mental health services programs and to the
8 **DEPARTMENT** director. ~~of the department.~~

9 (m) Serve as consultant to the director in matters related to
10 recipient rights.

11 (n) At least quarterly, provide summary complaint data
12 consistent with the annual report required in subdivision (o),
13 together with a summary of remedial action taken on substantiated
14 complaints, to the department and the state recipient rights
15 advisory committee.

16 (o) Submit to the department director and to the committees
17 and subcommittees of the legislature with legislative oversight of
18 mental health matters, for availability to the public, an annual
19 report on the current status of recipient rights for the state. The
20 report shall be submitted not later than March 31 of each year for
21 the preceding fiscal year. The annual report shall include, at a
22 minimum, all of the following:

23 (i) Summary data by type or category regarding the rights of
24 recipients receiving services from the department including the
25 number of complaints received by each state facility and other
26 state-operated placement agency, the number of reports filed, and
27 the number of reports investigated.

1 (ii) The number of substantiated rights violations by category
2 and by state facility.

3 (iii) The remedial actions taken on substantiated rights
4 violations by category and by state facility.

5 (iv) Training received by staff of the state office of
6 recipient rights.

7 (v) Training provided by the state office of recipient rights
8 to staff of contract providers.

9 (vi) Outcomes of assessments of the recipient rights system of
10 each community mental health services program.

11 (vii) Identification of patterns and trends in rights
12 protection in the public mental health system in this state.

13 (viii) Review of budgetary issues including staffing and
14 financial resources.

15 (ix) Summary of the results of any consumer satisfaction
16 surveys conducted.

17 (x) Recommendations to the department.

18 **(P) ANNUALLY SURVEY A RANDOMLY SELECTED SAMPLE OF APPLICANTS**
19 **WHOSE NAMES AND CONTACT INFORMATION HAVE BEEN PROVIDED UNDER**
20 **SECTION 755(7). THE OFFICE SHALL USE THE SURVEY TO DO ALL OF THE**
21 **FOLLOWING:**

22 **(i) DEVELOP STATEWIDE BASELINE DATA ON APPLICANTS DENIED MENTAL**
23 **HEALTH SERVICE.**

24 **(ii) DETERMINE TRENDS AND PATTERNS RELATED TO MENTAL HEALTH**
25 **SERVICE DENIALS.**

26 **(iii) IDENTIFY SPECIFIC CIRCUMSTANCES THAT MAY WARRANT**
27 **INVESTIGATION OF POSSIBLE RIGHTS VIOLATIONS.**

1 (Q) ~~(p)~~ Provide education and training to its recipient rights
2 advisory committee and its recipient rights appeals committee.

3 Sec. 755. (1) Each community mental health services program
4 and each licensed hospital shall establish an office of recipient
5 rights subordinate only to the executive director or hospital
6 director.

7 (2) Each community mental health services program and each
8 licensed hospital shall ensure all of the following:

9 (a) Education and training in recipient rights policies and
10 procedures are provided to its recipient rights advisory committee
11 and its recipient rights appeals committee.

12 (b) The process for funding the office of recipient rights
13 includes a review of the funding by the recipient rights advisory
14 committee.

15 (c) The office of recipient rights will be protected from
16 pressures that could interfere with the impartial, even-handed, and
17 thorough performance of its duties.

18 (d) The office of recipient rights will have unimpeded access
19 to all of the following:

20 (i) All programs and services operated by or under contract
21 with the community mental health services program or licensed
22 hospital.

23 (ii) All staff employed by or under contract with the community
24 mental health services program or licensed hospital.

25 (iii) All evidence necessary to conduct a thorough investigation
26 or to fulfill its monitoring function.

27 (e) Staff of the office of recipient rights receive training

1 each year in recipient rights protection.

2 (f) Each contract between the community mental health services
3 program or licensed hospital and a provider requires both of the
4 following:

5 (i) That the provider and his or her employees receive
6 recipient rights training.

7 (ii) That recipients will be protected from rights violations
8 while they are receiving services under the contract.

9 (3) Each community mental health services program and each
10 licensed hospital shall endeavor to ensure all of the following:

11 (a) Complainants, staff of the office of recipient rights, and
12 any staff acting on behalf of a recipient will be protected from
13 harassment or retaliation resulting from recipient rights
14 activities and that appropriate disciplinary action will be taken
15 if there is evidence of harassment or retaliation.

16 (b) Appropriate remedial action is taken to resolve violations
17 of rights and ~~notify~~**THAT** the complainants **ARE NOTIFIED** of
18 substantiated violations in a manner that does not violate employee
19 rights.

20 (4) The executive director or hospital director shall select a
21 director of the office of recipient rights who has the education,
22 training, and experience to fulfill the responsibilities of the
23 office. The executive director shall not select, replace, or
24 dismiss the director of the office of recipient rights without
25 first consulting the recipient rights advisory committee. The
26 director of the office of recipient rights shall have no direct
27 clinical service responsibility.

1 (5) Each office of recipient rights established under this
2 section shall do all of the following:

3 (a) Provide or coordinate the protection of recipient rights
4 for all directly operated or contracted services.

5 (b) Ensure that recipients, parents of minor recipients, and
6 guardians or other legal representatives have access to summaries
7 of the rights guaranteed by this chapter and chapter 7a and are
8 notified of those rights in an understandable manner, both at the
9 time services are initiated and periodically during the time
10 services are provided to the recipient.

11 (c) Ensure that the telephone number and address of the office
12 of recipient rights and the names of rights officers are
13 conspicuously posted in all service sites.

14 (d) Maintain a record system for all reports of apparent or
15 suspected rights violations received within the community mental
16 health services program system or the licensed hospital system,
17 including a mechanism for logging in all complaints and a mechanism
18 for secure storage of all investigative documents and evidence.

19 (e) Ensure that each service site is visited with the
20 frequency necessary for protection of rights but in no case less
21 than annually.

22 (f) Ensure that all individuals employed by the community
23 mental health services program, contract agency, or licensed
24 hospital receive training related to recipient rights protection
25 before or within 30 days after being employed.

26 (g) Review the recipient rights policies and the rights system
27 of each provider of mental health services under contract with the

1 community mental health services program or licensed hospital to
2 ensure that the rights protection system of each provider is in
3 compliance with this act and is of a uniformly high standard.

4 (h) Serve as consultant to the executive director or hospital
5 director and to staff of the community mental health services
6 program or licensed hospital in matters related to recipient
7 rights.

8 (i) Ensure that all reports of apparent or suspected
9 violations of rights within the community mental health services
10 program system or licensed hospital system are investigated in
11 accordance with section 778 and that those reports that do not
12 warrant investigation are recorded in accordance with subdivision
13 (d).

14 (j) Semiannually provide summary complaint data consistent
15 with the annual report required in subsection (6), together with a
16 summary of remedial action taken on substantiated complaints by
17 category, to the department and to the recipient rights advisory
18 committee of the community mental health services program or
19 licensed hospital.

20 (6) The executive director or hospital director shall submit
21 to the board of the community mental health services program or the
22 governing board of the licensed hospital and the department an
23 annual report prepared by the office of recipient rights on the
24 current status of recipient rights in the community mental health
25 services program system or licensed hospital system and a review of
26 the operations of the office of recipient rights. The report shall
27 be submitted not later than December 30 of each year for the

1 preceding fiscal year or period specified in contract. The annual
2 report shall include, at a minimum, all of the following:

3 (a) Summary data by category regarding the rights of
4 recipients receiving services from the community mental health
5 services program or licensed hospital including complaints
6 received, the number of reports filed, and the number of reports
7 investigated by provider.

8 (b) The number of substantiated rights violations by category
9 and provider.

10 (c) The remedial actions taken on substantiated rights
11 violations by category and provider.

12 (d) Training received by staff of the office of recipient
13 rights.

14 (e) Training provided by the office of recipient rights to
15 contract providers.

16 (f) Desired outcomes established for the office of recipient
17 rights and progress toward these outcomes.

18 (g) Recommendations to the community mental health services
19 program board or licensed hospital governing board.

20 (7) EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND EACH
21 LICENSED HOSPITAL SHALL ENDEAVOR TO OBTAIN NAMES OF AND CONTACT
22 INFORMATION FOR ALL MENTAL HEALTH SERVICE APPLICANTS. EACH
23 COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND EACH LICENSED HOSPITAL
24 SHALL SUBMIT TO THE STATE OFFICE OF RECIPIENT RIGHTS THE NAMES OF,
25 AND CONTACT INFORMATION FOR, APPLICANTS WHO HAVE BEEN DENIED MENTAL
26 HEALTH SERVICE. FOR PURPOSES OF THIS SUBSECTION, AN "APPLICANT"
27 INCLUDES, BUT IS NOT LIMITED TO, A LEGALLY COMPETENT ADULT WHO HAS

1 NO GUARDIAN WITH AUTHORITY TO MAKE MEDICAL DECISIONS ON HIS OR HER
2 BEHALF, A PARENT SEEKING SERVICE FOR HIS OR HER MINOR CHILD, OR A
3 GUARDIAN WITH AUTHORITY TO MAKE MEDICAL DECISIONS ON BEHALF OF HIS
4 OR HER WARD.