

Act No. 59  
Public Acts of 2015  
Approved by the Governor  
June 10, 2015  
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June 11, 2015  
EFFECTIVE DATE: October 1, 2015

**STATE OF MICHIGAN**  
**98TH LEGISLATURE**  
**REGULAR SESSION OF 2015**

Introduced by Rep. Afendoulis

# **ENROLLED HOUSE BILL No. 4444**

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 100c, 100d, 134, 135, 136, 137, 138, 139, 143, 143a, 148, 149, and 149b (MCL 330.1100c, 330.1100d, 330.1134, 330.1135, 330.1136, 330.1137, 330.1138, 330.1139, 330.1143, 330.1143a, 330.1148, 330.1149, and 330.1149b), sections 100c and 100d as amended by 2014 PA 200, sections 134, 136, 143, 143a, 148, 149, and 149b as amended by 1994 PA 137, sections 135 and 139 as amended by 1995 PA 290, section 137 as amended by 2004 PA 259, and section 138 as amended by 2006 PA 207.

*The People of the State of Michigan enact:*

Sec. 100c. (1) “Peace officer” means an officer of the department of state police or of a law enforcement agency of a county, township, city, or village who is responsible for the prevention and detection of crime and enforcement of the criminal laws of this state. For the purposes of sections 408 and 427, peace officer also includes an officer of the United States Secret Service with the officer’s consent and a police officer of the Veterans’ Administration Medical Center Reservation.

(2) “Peer review” means a process, including the review process required under section 143a, in which mental health professionals of a state facility, licensed hospital, or community mental health services program evaluate the clinical competence of staff and the quality and appropriateness of care provided to recipients. Peer review evaluations are confidential in accordance with section 748(9) and are based on criteria established by the facility or community mental health services program itself, the accepted standards of the mental health professions, and the department.

(3) “Person requiring treatment” means an individual who meets the criteria described in section 401.

(4) "Physician" means an individual licensed or otherwise authorized to engage in the practice of medicine under part 170 of the public health code, 1978 PA 368, MCL 333.17001 to 333.17084, or to engage in the practice of osteopathic medicine and surgery under part 175 of the public health code, 1978 PA 368, MCL 333.17501 to 333.17556.

(5) "Primary consumer" means an individual who has received or is receiving services from the department or a community mental health services program or services from the private sector equivalent to those offered by the department or a community mental health services program.

(6) "Priority" means preference for and dedication of a major proportion of resources to specified populations or services. Priority does not mean serving or funding the specified populations or services to the exclusion of other populations or services.

(7) "Protective custody" means the temporary custody of an individual by a peace officer with or without the individual's consent for the purpose of protecting that individual's health and safety, or the health and safety of the public, and for the purpose of transporting the individual under section 276, 408, or 427 if the individual appears, in the judgment of the peace officer, to be a person requiring treatment or is a person requiring treatment. Protective custody is civil in nature and is not an arrest.

(8) "Psychiatric unit" means a unit of a general hospital that provides inpatient services for individuals with serious mental illness or serious emotional disturbance. As used in this subsection, "general hospital" means a hospital as defined in section 20106 of the public health code, 1978 PA 368, MCL 333.20106.

(9) "Psychiatrist" means 1 or more of the following:

(a) A physician who has completed a residency program in psychiatry approved by the Accreditation Council for Graduate Medical Education or the American Osteopathic Association, or who has completed 12 months of psychiatric rotation and is enrolled in an approved residency program as described in this subdivision.

(b) A psychiatrist employed by or under contract with the department or a community mental health services program on March 28, 1996.

(c) A physician who devotes a substantial portion of his or her time to the practice of psychiatry and is approved by the director.

(10) "Psychologist" means an individual who is licensed or otherwise authorized to engage in the practice of psychology under part 182 of the public health code, 1978 PA 368, MCL 333.18201 to 333.18237, and who devotes a substantial portion of his or her time to the diagnosis and treatment of individuals with serious mental illness, serious emotional disturbance, substance use disorder, or developmental disability.

(11) "Recipient" means an individual who receives mental health services from the department, a community mental health services program, or a facility or from a provider that is under contract with the department or a community mental health services program. For the purposes of this act, recipient does not include an individual receiving substance use disorder services under chapter 2A unless that individual is also receiving mental health services under this act in conjunction with substance use disorder services.

(12) "Recipient rights advisory committee" means a committee of a community mental health services program board appointed under section 757 or a recipient rights advisory committee appointed by a licensed hospital under section 758.

(13) "Recovery" means a highly individualized process of healing and transformation by which the individual gains control over his or her life. Related services include recovery management, recovery support services, recovery houses or transitional living programs, and relapse prevention. Recovery involves the development of a new meaning, purpose, and growing beyond the impact of addiction or a diagnosis. Recovery may include the pursuit of spiritual, emotional, mental, or physical well-being.

(14) "Regional entity" means an entity established under section 204b to provide specialty services and supports.

(15) "Rehabilitation" means the act of restoring an individual to a state of mental and physical health or useful activity through vocational or educational training, therapy, and counseling.

(16) "Resident" means an individual who receives services in a facility.

(17) "Responsible mental health agency" means the hospital, center, or community mental health services program that has primary responsibility for the recipient's care or for the delivery of services or supports to that recipient.

(18) "Rule" means a rule promulgated under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 100d. (1) "Service" means a mental health service or a substance use disorder service.

(2) "Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder affecting a minor that exists or has existed during the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or

limits the minor's role or functioning in family, school, or community activities. The following disorders are included only if they occur in conjunction with another diagnosable serious emotional disturbance:

- (a) A substance use disorder.
- (b) A developmental disorder.
- (c) "V" codes in the Diagnostic and Statistical Manual of Mental Disorders.

(3) "Serious mental illness" means a diagnosable mental, behavioral, or emotional disorder affecting an adult that exists or has existed within the past year for a period of time sufficient to meet diagnostic criteria specified in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and approved by the department and that has resulted in functional impairment that substantially interferes with or limits 1 or more major life activities. Serious mental illness includes dementia with delusions, dementia with depressed mood, and dementia with behavioral disturbance but does not include any other dementia unless the dementia occurs in conjunction with another diagnosable serious mental illness. The following disorders also are included only if they occur in conjunction with another diagnosable serious mental illness:

- (a) A substance use disorder.
- (b) A developmental disorder.
- (c) A "V" code in the Diagnostic and Statistical Manual of Mental Disorders.

(4) "Special compensation" means payment to an adult foster care facility to ensure the provision of a specialized program in addition to the basic payment for adult foster care. Special compensation does not include payment received directly from the Medicaid program for personal care services for a resident, or payment received under the supplemental security income program.

(5) "Specialized program" means a program of services, supports, or treatment that are provided in an adult foster care facility to meet the unique programmatic needs of individuals with serious mental illness or developmental disability as set forth in the resident's individual plan of services and for which the adult foster care facility receives special compensation.

(6) "Specialized residential service" means a combination of residential care and mental health services that are expressly designed to provide rehabilitation and therapy to a recipient, that are provided in the residence of the recipient, and that are part of a comprehensive individual plan of services.

(7) "State administered funds" means revenues appropriated by the legislature exclusively for the purposes provided for in regard to substance use disorder services and prevention.

(8) "State facility" means a center or a hospital operated by the department.

(9) "State recipient rights advisory committee" means a committee appointed by the director under section 756 to advise the director and the director of the department's office of recipient rights.

(10) "Substance abuse" means the taking of alcohol or other drugs at dosages that place an individual's social, economic, psychological, and physical welfare in potential hazard or to the extent that an individual loses the power of self-control as a result of the use of alcohol or drugs, or while habitually under the influence of alcohol or drugs, endangers public health, morals, safety, or welfare, or a combination thereof.

(11) "Substance use disorder" means chronic disorder in which repeated use of alcohol, drugs, or both, results in significant and adverse consequences. Substance use disorder includes substance abuse.

(12) "Substance use disorder prevention services" means services that are intended to reduce the consequences of substance use disorders in communities by preventing or delaying the onset of substance abuse and that are intended to reduce the progression of substance use disorders in individuals. Substance use disorder prevention is an ordered set of steps that promotes individual, family, and community health, prevents mental and behavioral disorders, supports resilience and recovery, and reinforces treatment principles to prevent relapse.

(13) "Substance use disorder treatment and rehabilitation services" means providing identifiable recovery-oriented services including:

(a) Early intervention and crisis intervention counseling services for individuals who are current or former individuals with substance use disorder.

(b) Referral services for individuals with substance use disorder, their families, and the general public.

(c) Planned treatment services, including chemotherapy, counseling, or rehabilitation for individuals physiologically or psychologically dependent upon or abusing alcohol or drugs.

(14) "Supplemental security income" means the program authorized under title XVI of the social security act, 42 USC 1381 to 1383f.

(15) "Transfer facility" means a facility selected by the department-designated community mental health entity, which facility is physically located in a jail or lockup and is staffed by at least 1 designated representative when in use according to chapter 2A.

(16) "Transition services" means a coordinated set of activities for a special education student designed within an outcome-oriented process that promotes movement from school to postschool activities, including postsecondary education, vocational training, integrated employment including supported employment, continuing and adult education, adult services, independent living, or community participation.

(17) "Treatment" means care, diagnostic, and therapeutic services, including the administration of drugs, and any other service for the treatment of an individual's serious mental illness, serious emotional disturbance, or substance use disorder.

(18) "Urgent situation" means a situation in which an individual is determined to be at risk of experiencing an emergency situation in the near future if he or she does not receive care, treatment, or support services.

(19) "Wraparound services" means an individually designed set of services provided to minors with serious emotional disturbance or serious mental illness and their families that includes treatment services and personal support services or any other supports necessary to foster education preparedness, employability, and preservation of the child in the family home. Wraparound services are to be developed through an interagency collaborative approach and a minor's parent or guardian and a minor age 14 or older are to participate in planning the services.

Sec. 134. (1) The director shall establish a comprehensive system of licensing for psychiatric hospitals and psychiatric units in the state to protect the public by ensuring that these hospitals and units provide the facilities and the ancillary supporting services necessary to maintain a high quality of patient care. Separate criteria shall be developed for licensing hospital beds for minors.

(2) The director shall coordinate all functions within state government affecting psychiatric hospitals, and shall cooperate with other state agencies that establish standards or requirements for facilities providing mental health care to assure necessary, equitable, and consistent state regulation of these facilities without duplication of inspections or services. The director may enter into agreements with other state agencies to accomplish this purpose.

Sec. 135. (1) Subject to section 114a, the director shall promulgate rules to define psychiatric hospitals and psychiatric hospital services to clearly differentiate between the active intensive care expected in psychiatric hospitals or psychiatric units and that care which is characteristically expected in general hospitals, long-term care facilities, or residential facilities.

(2) Sections 134 to 150 do not cover adult foster care facilities or child care organizations licensed under 1973 PA 116, MCL 722.111 to 722.128.

Sec. 136. The director shall administer sections 134 through 150 and promulgate rules to implement the purposes of sections 134 through 150 for the maintenance and operation of psychiatric hospitals and psychiatric units as necessary to enable state or private facilities, or both, to qualify for federal funds available for patient care or for construction or remodeling of facilities. The rules shall be promulgated according to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

Sec. 137. (1) A person shall not construct, establish, or maintain a psychiatric hospital or psychiatric unit or use the terms psychiatric hospital or psychiatric unit without first obtaining a license. The director shall require an applicant or a licensee to disclose the names, addresses, and official positions of all persons who have an ownership interest in a psychiatric hospital or psychiatric unit. If the psychiatric hospital or psychiatric unit is located on or in real estate that is leased, the applicant or licensee shall disclose the name of the lessor and any direct or indirect interest that the applicant or licensee has in the lease other than as lessee. A license shall be granted for no longer than 1 year after the date of issuance, unless otherwise provided in sections 134 to 150. The director may issue a provisional license for 1 year to provide a licensee or applicant time to undertake remedial action to correct programmatic or physical plant deficiencies. A provisional license may be renewed for not longer than 1 additional year. A violation of this section is a misdemeanor and is punishable by a fine of not more than \$1,000.00 for each violation.

(2) Annual licensure of psychiatric hospitals and psychiatric units shall be implemented by March 28, 1997. License fees shall be prorated according to the period of time that the license will be in force.

(3) The department shall issue an initial license under this section not later than 6 months after the applicant files a completed application. Receipt of the application is considered the date the application is received by any agency or department of this state. If the application is considered incomplete by the department, the department shall notify the applicant in writing or make notice electronically available within 30 days after receipt of the incomplete application, describing the deficiency and requesting additional information. The 6-month period is tolled upon notification by the department of a deficiency until the date the requested information is received by the department. The determination of the completeness of an application is not an approval of the application for the license and does not confer eligibility on an applicant determined otherwise ineligible for issuance of a license.

(4) If the department fails to issue or deny a license or registration within the time required by this section, the department shall return the license fee and shall reduce the license fee for the applicant's next renewal application, if

any, by 15%. Failure to issue or deny a license within the time period required under this section does not allow the department to otherwise delay the processing of the application. A completed application shall be placed in sequence with other completed applications received at that same time. The department shall not discriminate against an applicant in the processing of the application based on the fact that the application fee was refunded or discounted under this subsection.

(5) The director of the department shall submit a report by December 1 of each year to the standing committees and appropriations subcommittees of the senate and house of representatives concerned with issues relating to mental health. The director shall include all of the following information in the report concerning the preceding fiscal year:

(a) The number of initial applications the department received and completed within the 6-month time period described in subsection (3).

(b) The number of applications rejected.

(c) The number of applicants not issued a license within the 6-month time period and the amount of money returned to licensees under subsection (4).

(6) As used in this section, "completed application" means an application complete on its face and submitted with any applicable licensing fees as well as any other information, records, approval, security, or similar item required by law or rule from a local unit of government, a federal agency, or a private entity but not from another department or agency of this state.

Sec. 138. Before the issuance of an original or annual license, a psychiatric hospital or psychiatric unit shall be inspected by the bureau of fire services created in section 1b of the fire prevention code, 1941 PA 207, MCL 29.1b. A license shall not be issued until the bureau of fire services approves the hospital or unit.

Sec. 139. (1) Until October 1, 2019, an applicant for a license under this act shall submit to the department with the application form, or license renewal, a license fee of \$500.00 plus \$10.00 per patient bed.

(2) The license fee for a provisional license is the same as the fee for a license. When the requirements for licensure are met, the provisional license shall be replaced by a license without an additional fee for the balance of the 1-year period.

(3) An applicant for a construction permit shall submit to the department with the application form a permit fee of \$300.00.

(4) If an application for a license or permit is denied, or if a license or permit is revoked before its expiration date, the fees paid to the department shall not be refunded.

Sec. 143. The governing body of a facility licensed under sections 134 through 150 is responsible for the operation of the facility, for the selection of the medical staff, and for the quality of care rendered by the facility. The governing body shall cooperate with the director of mental health in the enforcement of sections 134 through 150, and shall insure that physicians and other personnel for whom a state license or registration is required are currently licensed or registered.

Sec. 143a. (1) The owner, operator, and governing body of a psychiatric hospital or psychiatric unit licensed under this chapter or operated by the department shall assure that licensed, registered, or certified mental health professionals admitted to practice in the facility are organized in order to enable an effective review of the professional practices in the psychiatric hospital or psychiatric unit for the purpose of improving the quality of patient care provided in the facility. This review shall include the quality and appropriateness of the care provided.

(2) The records, data, and knowledge collected for or by individuals or committees assigned a review function under subsection (1) are confidential, shall be used only for the purposes of review, are not public records, and are not subject to court subpoena.

(3) This section does not prevent disclosure of individual case records under section 748 or disclosure required by federal law to the agency designated by the governor to provide protection and advocacy under section 931.

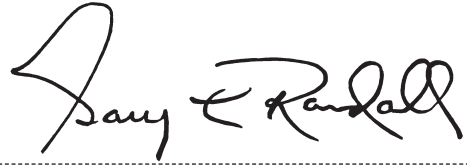
Sec. 148. The terms psychiatric hospital or psychiatric unit shall not be used to describe or refer to an institution or program, unless the institution or program is licensed by the director according to sections 134 through 150.

Sec. 149. The director may maintain action in the name of the people of the state to restrain or prevent the construction, establishment, management, or operation of a psychiatric hospital or psychiatric unit without a license.

Sec. 149b. A psychiatric hospital or psychiatric unit operated or licensed by the department shall comply with the medical waste regulatory act, part 138 of the public health code, 1978 PA 368, MCL 333.13801 to 333.13832.

Enacting section 1. This amendatory act takes effect October 1, 2015.

This act is ordered to take immediate effect.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved .....

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Governor