

Act No. 499
Public Acts of 2004
Approved by the Governor
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**STATE OF MICHIGAN
92ND LEGISLATURE
REGULAR SESSION OF 2004**

Introduced by Senators Jacobs, George, Cropsey, Brater, McManus, Goschka, Birkholz, Schauer and Thomas

ENROLLED SENATE BILL No. 686

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 services; to provide for certain charges and fees; to establish civil admission procedures for individuals with mental illness or developmental disability; to establish guardianship procedures for individuals with developmental disability; to establish procedures regarding individuals with mental illness 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 100a, 100b, and 161 (MCL 330.1100a, 330.1100b, and 330.1161), sections 100a and 161 as amended by 1998 PA 497 and section 100b as added by 1995 PA 290, and by adding section 116a.

The People of the State of Michigan enact:

Sec. 100a. (1) "Abilities" means the qualities, skills, and competencies of an individual that reflect the individual's talents and acquired proficiencies.

(2) "Abuse" means nonaccidental physical or emotional harm to a recipient, or sexual contact with or sexual penetration of a recipient as those terms are defined in section 520a of the Michigan penal code, 1931 PA 328, MCL 750.520a, that is committed by an employee or volunteer of the department, a community mental health services program, or a licensed hospital or by an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital.

(3) "Adaptive skills" means skills in 1 or more of the following areas:

- (a) Communication.
- (b) Self-care.
- (c) Home living.
- (d) Social skills.
- (e) Community use.
- (f) Self-direction.
- (g) Health and safety.
- (h) Functional academics.
- (i) Leisure.
- (j) Work.

(4) "Adult foster care facility" means an adult foster care facility licensed under the adult foster care facility licensing act, 1979 PA 218, MCL 400.701 to 400.737.

(5) "Applicant" means an individual or his or her legal representative who makes a request for mental health services.

(6) “Assisted outpatient treatment” or “AOT” means the categories of outpatient services ordered by the court under section 433 or 469a. Assisted outpatient treatment includes case management services to provide care coordination. Assisted outpatient treatment may also include 1 or more of the following categories of services: medication; periodic blood tests or urinalysis to determine compliance with prescribed medications; individual or group therapy; day or partial day programming activities; vocational, educational, or self-help training or activities; assertive community treatment team services; alcohol or substance abuse treatment and counseling and periodic tests for the presence of alcohol or illegal drugs for an individual with a history of alcohol or substance abuse; supervision of living arrangements; and any other services within a local or unified services plan developed under this act that are prescribed to treat the individual’s mental illness and to assist the individual in living and functioning in the community or to attempt to prevent a relapse or deterioration that may reasonably be predicted to result in suicide, the need for hospitalization, or serious violent behavior. The medical review and direction included in an assisted outpatient treatment plan shall be provided under the supervision of a psychiatrist.

(7) “Board” means the governing body of a community mental health services program.

(8) “Board of commissioners” means a county board of commissioners.

(9) “Center” means a facility operated by the department to admit individuals with developmental disabilities and provide habilitation and treatment services.

(10) “Certification” means formal approval of a program by the department in accordance with standards developed or approved by the department.

(11) “Child abuse” and “child neglect” mean those terms as defined in section 2 of the child protection law, 1975 PA 238, MCL 722.622.

(12) “Child and adolescent psychiatrist” means 1 or more of the following:

(a) A physician who has completed a residency program in child and adolescent psychiatry approved by the accreditation council for graduate medical education or the American osteopathic association, or who has completed 12 months of child and adolescent psychiatric rotation and is enrolled in an approved residency program as described in this subsection.

(b) A psychiatrist employed by or under contract as a child and adolescent psychiatrist with the department or a community mental health services program on March 28, 1996, who has education and clinical experience in the evaluation and treatment of children or adolescents with serious emotional disturbance.

(c) A psychiatrist who has education and clinical experience in the evaluation and treatment of children or adolescents with serious emotional disturbance who is approved by the director.

(13) “Children’s diagnostic and treatment service” means a program operated by or under contract with a community mental health services program, that provides examination, evaluation, and referrals for minors, including emergency referrals, that provides or facilitates treatment for minors, and that has been certified by the department.

(14) “Community mental health authority” means a separate legal public governmental entity created under section 205 to operate as a community mental health services program.

(15) “Community mental health organization” means a community mental health services program that is organized under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(16) “Community mental health services program” means a program operated under chapter 2 as a county community mental health agency, a community mental health authority, or a community mental health organization.

(17) “Consent” means a written agreement executed by a recipient, a minor recipient’s parent, or a recipient’s legal representative with authority to execute a consent, or a verbal agreement of a recipient that is witnessed and documented by an individual other than the individual providing treatment.

(18) “County community mental health agency” means an official county or multicounty agency created under section 210 that operates as a community mental health services program and that has not elected to become a community mental health authority under section 205 or a community mental health organization under the urban cooperation act of 1967, 1967 (Ex Sess) PA 7, MCL 124.501 to 124.512.

(19) “Dependent living setting” means all of the following:

(a) An adult foster care facility.

(b) A nursing home licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(c) A home for the aged licensed under article 17 of the public health code, 1978 PA 368, MCL 333.20101 to 333.22260.

(20) “Department” means the department of community health.

(21) “Developmental disability” means either of the following:

(a) If applied to an individual older than 5 years of age, a severe, chronic condition that meets all of the following requirements:

(i) Is attributable to a mental or physical impairment or a combination of mental and physical impairments.

(ii) Is manifested before the individual is 22 years old.

(iii) Is likely to continue indefinitely.

(iv) Results in substantial functional limitations in 3 or more of the following areas of major life activity:

- (A) Self-care.
- (B) Receptive and expressive language.
- (C) Learning.
- (D) Mobility.
- (E) Self-direction.
- (F) Capacity for independent living.
- (G) Economic self-sufficiency.

(v) Reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration and are individually planned and coordinated.

(b) If applied to a minor from birth to 5 years of age, a substantial developmental delay or a specific congenital or acquired condition with a high probability of resulting in developmental disability as defined in subdivision (a) if services are not provided.

(22) "Director" means the director of the department or his or her designee.

(23) "Discharge" means an absolute, unconditional release of an individual from a facility by action of the facility or a court.

(24) "Eligible minor" means an individual less than 18 years of age who is recommended in the written report of a multidisciplinary team under rules promulgated by the department of education to be classified as 1 of the following:

- (a) Severely mentally impaired.
- (b) Severely multiply impaired.

(c) Autistic impaired and receiving special education services in a program designed for the autistic impaired under subsection (1) of R 340.1758 of the Michigan administrative code or in a program designed for the severely mentally impaired or severely multiply impaired.

(25) "Emergency situation" means a situation in which an individual is experiencing a serious mental illness or a developmental disability, or a minor is experiencing a serious emotional disturbance, and 1 of the following applies:

(a) The individual can reasonably be expected within the near future to physically injure himself, herself, or another individual, either intentionally or unintentionally.

(b) The individual is unable to provide himself or herself food, clothing, or shelter or to attend to basic physical activities such as eating, toileting, bathing, grooming, dressing, or ambulating, and this inability may lead in the near future to harm to the individual or to another individual.

(c) The individual's judgment is so impaired that he or she is unable to understand the need for treatment and, in the opinion of the mental health professional, his or her continued behavior as a result of the mental illness, developmental disability, or emotional disturbance can reasonably be expected in the near future to result in physical harm to the individual or to another individual.

(26) "Executive director" means an individual appointed under section 226 to direct a community mental health services program or his or her designee.

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) "Individual plan of services" or "plan of services" means a written individualized plan of services developed with a recipient as required by section 712.

(11) "Licensed facility" means a facility licensed by the department under section 137 or an adult foster care facility.

(12) "Licensed psychologist" means a doctoral level psychologist licensed under section 18223(1) of the public health code, 1978 PA 368, MCL 333.18223.

(13) "Medical director" means a psychiatrist appointed under section 231 to advise the executive director of a community mental health services program.

(14) "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 who is licensed to practice medicine or osteopathic medicine and surgery in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(b) A psychologist licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(c) A registered professional nurse licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(d) Until July 1, 2005, a certified social worker registered under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838. Beginning July 1, 2005, a licensed master's social worker licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(e) A licensed professional counselor licensed to practice in this state under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(f) A marriage and family therapist licensed under article 15 of the public health code, 1978 PA 368, MCL 333.16101 to 333.18838.

(15) "Mental retardation" 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 mental retardation will generally improve.

(16) "Minor" means an individual under the age of 18 years.

(17) "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.

(18) "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, community mental health services program, or licensed hospital; or an employee or volunteer of a service provider under contract with the department, community mental health services program, or licensed hospital, that denies a recipient the standard of care or treatment to which he or she is entitled under this act.

Sec. 116a. (1) The department shall make available on the department's website an annual report concerning assisted outpatient treatment services in this state. The report shall include statewide information regarding the number of individuals receiving and completing assisted outpatient treatment and shall include the cost and benefit projections that are available concerning assisted outpatient treatment in this state.

(2) The report shall include all of the following information regarding petitions filed under section 433:

(a) The number of assisted outpatient treatment petitions filed.

(b) The number of court rulings on petitions filed under section 433 that resulted in an assisted outpatient treatment order.

(c) The number of court rulings on petitions filed under section 433 that did not result in an assisted outpatient treatment order.

(3) To the extent possible if resources are available, when evaluating the assisted outpatient treatment in this state, the department shall attempt to utilize expert assistance from outside entities, including, but not limited to, state universities.

Sec. 161. In conjunction with community mental health services programs, the department shall conduct annually and forward to the governor and the house and senate appropriations committees, and the senate and house committees with legislative oversight of human services and mental health, an evaluation of the family support subsidy program that shall include, but is not limited to, all of the following:

- (a) The impact of the family support subsidy program upon children covered by this act in facilities and residential care programs including, to the extent possible, sample case reviews of families who choose not to participate.
- (b) Case reviews of families who voluntarily terminate participation in the family support subsidy program for any reason, particularly when the eligible minor is placed out of the family home, including the involvement of the department and community mental health services programs in offering suitable alternatives.
- (c) Sample assessments of families receiving family support subsidy payments including adequacy of subsidy and need for services not available.
- (d) The efforts to encourage program participation of eligible families.
- (e) The geographic distribution of families receiving subsidy payments and, to the extent possible, eligible minors presumed to be eligible for family support subsidy payments.
- (f) Programmatic and legislative recommendations to further assist families in providing care for eligible minors.
- (g) Problems that arise in identifying eligible minors through diagnostic evaluations performed under rules promulgated by the department of education.
- (h) The number of beds reduced in state facilities and foster care facilities serving severely mentally, multiply, and autistic impaired children when the children return home to their natural families as a result of the subsidy program.
- (i) Caseload figures by eligibility category as described in section 100a(24).

Enacting section 1. This amendatory act does not take effect unless all of the following bills of the 92nd Legislature are enacted into law:

- (a) Senate Bill No. 683.
- (b) Senate Bill No. 684.
- (c) Senate Bill No. 685.
- (d) Senate Bill No. 1464.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

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Governor