

STATE OF MICHIGAN
96TH LEGISLATURE
REGULAR SESSION OF 2012

Introduced by Reps. Somerville, Haines and Muxlow

ENROLLED HOUSE BILL No. 5315

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 section 724 (MCL 330.1724), as amended by 1995 PA 290.

The People of the State of Michigan enact:

Sec. 724. (1) A recipient of mental health services shall not be fingerprinted, photographed, audiorecorded, or viewed through a 1-way glass except in the circumstances and under the conditions set forth in this section. As used in this section, photographs include still pictures, motion pictures, and recordings.

(2) Fingerprints, photographs, or audiorecordings may be taken and used and 1-way glass may be used in order to provide services, including research, to a recipient or in order to determine the name of the recipient only when prior written consent is obtained from 1 of the following:

- (a) The recipient if 18 years of age or over and competent to consent.
- (b) The guardian of the recipient if the guardian is legally empowered to execute such a consent.
- (c) The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age.

(3) Fingerprints, photographs, or audiorecordings taken in order to provide services to a recipient, and any copies of them, shall be kept as part of the record of the recipient.

(4) Fingerprints, photographs, or audiorecordings taken in order to determine the name of a recipient shall be kept as part of the record of the recipient, except that when necessary the fingerprints, photographs, or audiorecordings may be delivered to others for assistance in determining the name of the recipient. Fingerprints, photographs, or audiorecordings so delivered shall be returned together with copies that were made. An individual receiving fingerprints, photographs, or audiorecordings shall be informed of the requirement that return be made. Upon return, the fingerprints, photographs, or audiorecordings, together with copies, shall be kept as part of the record of the recipient.

(5) Fingerprints, photographs, or audiorecordings in the record of a recipient, and any copies of them, shall be given to the recipient or destroyed when they are no longer essential in order to achieve 1 of the objectives set forth in subsection (2), or upon discharge of the resident, whichever occurs first.

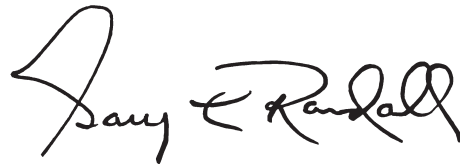
(6) Photographs of a recipient may be taken for purely personal or social purposes and shall be maintained as the recipient's personal property. A photograph of a recipient shall not be taken or used under this subsection if the recipient has indicated his or her objection.

(7) Photographs or audiorecordings may be taken and 1-way glass may be used for educational or training purposes only when express written consent is obtained from 1 of the following:

- (a) The recipient if 18 years of age or over and competent to consent.
- (b) The guardian of the recipient if the guardian is legally empowered to execute such a consent.
- (c) The parent with legal and physical custody of the recipient if the recipient is less than 18 years of age.
- (8) This section does not apply to recipients of mental health services referred under chapter 10.

(9) Video surveillance may be conducted in a psychiatric hospital for purposes of safety, security, and quality improvement. Video surveillance may only be conducted in common areas such as hallways, nursing station areas, and social activity areas within the psychiatric unit. Video surveillance recordings taken in common areas shall not be used for treatment or therapeutic purposes. Before implementation of video surveillance, the psychiatric hospital shall establish written policies and procedures that address, at a minimum, all of the following:

- (a) Identification of locations where video surveillance images will be recorded and saved.
- (b) Mechanisms by which recipients and visitors will be advised of the video surveillance.
- (c) Security provisions that assure that only authorized staff members have access to view recorded surveillance video. The security provisions shall include all of the following:
 - (i) Who may authorize viewing of recorded surveillance video.
 - (ii) Circumstances under which recorded surveillance video may be viewed.
 - (iii) Who may view recorded surveillance video with proper authorization.
 - (iv) Safeguards to prevent and detect unauthorized viewing of recorded surveillance video.
 - (v) Circumstances under which recorded surveillance video may be duplicated and what steps will be taken to prevent unauthorized distribution of the duplicate.
- (d) Documentation required to be maintained for each instance of authorized access, viewing duplication, or distribution of any recorded surveillance videos.
- (e) Process to assure retrieval of distributed recorded surveillance video when the purpose for which the video was distributed no longer exists.
- (f) Archived footage of video surveillance recordings for up to 30 days unless notice is received that an incident requires investigation by the department's office of recipient rights, the licensing division of the bureau of health systems, law enforcement, licensed psychiatric hospital or unit office of recipient rights, and the United States department of health and human services centers for medicaid and medicare services. In that case, archived footage of video surveillance recordings may be retained for the duration of the investigation.
- (g) Recorded video surveillance images shall not be maintained as part of a recipient's clinical record.



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Clerk of the House of Representatives



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Secretary of the Senate

Approved

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Governor