

# SENATE BILL No. 349

May 2, 2013, Introduced by Senators GREEN, HILDENBRAND, ROBERTSON, MARLEAU, JONES and BRANDENBURG and referred to the Committee on Judiciary.

A bill to amend 1974 PA 258, entitled  
"Mental health code,"  
by amending section 748 (MCL 330.1748), as amended by 1998 PA 497.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1           Sec. 748. (1) Information in the record of a recipient, and  
2 other information acquired in the course of providing mental health  
3 services to a recipient, shall be kept confidential and shall not  
4 be open to public inspection. The information may be disclosed  
5 outside the department, community mental health services program,  
6 licensed facility, or contract provider, whichever is the holder of  
7 the record, only in the circumstances and under the conditions set  
8 forth in this section or section 748a.

9           (2) If information made confidential by this section is  
10 disclosed, the identity of the individual to whom it pertains shall  
11 be protected and shall not be disclosed unless it is germane to the

1 authorized purpose for which disclosure was sought. ~~and, when~~  
2 **WHEN** practicable, no other information shall be disclosed unless it  
3 is germane to the authorized purpose for which disclosure was  
4 sought.

5 (3) An individual receiving information made confidential by  
6 this section shall disclose the information to others only to the  
7 extent consistent with the authorized purpose for which the  
8 information was obtained.

9 (4) For case record entries made subsequent to March 28, 1996,  
10 information made confidential by this section shall be disclosed to  
11 an adult recipient, upon the recipient's request, if the recipient  
12 does not have a guardian and has not been adjudicated legally  
13 incompetent. The holder of the record shall comply with the adult  
14 recipient's request for disclosure as expeditiously as possible but  
15 in no event later than the earlier of 30 days after receipt of the  
16 request or, if the recipient is receiving treatment from the holder  
17 of the record, before the recipient is released from treatment.

18 (5) Except as otherwise provided in this section or section  
19 748a, when requested, information made confidential by this section  
20 shall be disclosed only under 1 or more of the following  
21 circumstances:

22 (a) ~~Pursuant~~ **ACCORDING** to an order or a subpoena of a court of  
23 record or a subpoena of the legislature, unless the information is  
24 privileged by law.

25 (b) To a prosecuting attorney as necessary for the prosecuting  
26 attorney to participate in a proceeding governed by this act.

27 (c) To an attorney for the recipient, with the consent of the

1 recipient, the recipient's guardian with authority to consent, or  
2 the parent with legal and physical custody of a minor recipient.

3 (d) If necessary in order to comply with another provision of  
4 law.

5 (e) To the department if the information is necessary in order  
6 for the department to discharge a responsibility placed upon it by  
7 law.

8 (f) To the office of the auditor general if the information is  
9 necessary for that office to discharge its constitutional  
10 responsibility.

11 (g) To a surviving spouse of the recipient or, if there is no  
12 surviving spouse, to the individual or individuals most closely  
13 related to the deceased recipient within the third degree of  
14 consanguinity as defined in civil law, for the purpose of applying  
15 for and receiving benefits.

16 **(H) TO THE NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM,**  
17 **IN ACCORDANCE WITH FEDERAL LAW, INFORMATION RELATING TO ELIGIBILITY**  
18 **TO RECEIVE OR POSSESS A FIREARM ACCORDING TO STATE OR FEDERAL LAW.**

19 (6) Except as otherwise provided in subsection (4), if consent  
20 is obtained from the recipient, the recipient's guardian with  
21 authority to consent, the parent with legal custody of a minor  
22 recipient, or the court-appointed personal representative or  
23 executor of the estate of a deceased recipient, information made  
24 confidential by this section may be disclosed to all of the  
25 following:

26 (a) A provider of mental health services to the recipient.

27 (b) The recipient or his or her guardian or the parent of a

1 minor recipient or another individual or agency unless in the  
2 written judgment of the holder the disclosure would be detrimental  
3 to the recipient or others.

4 (7) Information may be disclosed in the discretion of the  
5 holder of the record under 1 or more of the following  
6 circumstances:

7 (a) As necessary in order for the recipient to apply for or  
8 receive benefits.

9 (b) As necessary for the purpose of outside research,  
10 evaluation, accreditation, or statistical compilation. The  
11 individual who is the subject of the information shall not be  
12 identified in the disclosed information unless the identification  
13 is essential in order to achieve the purpose for which the  
14 information is sought or if preventing the identification would  
15 clearly be impractical, but not if the subject of the information  
16 is likely to be harmed by the identification.

17 (c) To a provider of mental or other health services or a  
18 public agency, if there is a compelling need for disclosure based  
19 upon a substantial probability of harm to the recipient or other  
20 individuals.

21 (8) If required by federal law, the department or a community  
22 mental health services program or licensed facility shall grant a  
23 representative of the protection and advocacy system designated by  
24 the governor in compliance with section 931 access to the records  
25 of all of the following:

26 (a) A recipient, if the recipient, the recipient's guardian  
27 with authority to consent, or a minor recipient's parent with legal

1 and physical custody of the recipient has consented to the access.

2 (b) A recipient, including a recipient who has died or whose  
3 location is unknown, if all of the following apply:

4 (i) Because of mental or physical condition, the recipient is  
5 unable to consent to the access.

6 (ii) The recipient does not have a guardian or other legal  
7 representative, or the recipient's guardian is the state.

8 (iii) The protection and advocacy system has received a  
9 complaint on behalf of the recipient or has probable cause to  
10 believe based on monitoring or other evidence that the recipient  
11 has been subject to abuse or neglect.

12 (c) A recipient who has a guardian or other legal  
13 representative if all of the following apply:

14 (i) A complaint has been received by the protection and  
15 advocacy system or there is probable cause to believe the health or  
16 safety of the recipient is in serious and immediate jeopardy.

17 (ii) Upon receipt of the name and address of the recipient's  
18 legal representative, the protection and advocacy system has  
19 contacted the representative and offered assistance in resolving  
20 the situation.

21 (iii) The representative has failed or refused to act on behalf  
22 of the recipient.

23 (9) The records, data, and knowledge collected for or by  
24 individuals or committees assigned a peer review function,  
25 including the review function under section 143a(1), are  
26 confidential, shall be used only for the purposes of peer review,  
27 are not public records, and are not subject to court subpoena. This

1 subsection does not prevent disclosure of individual case records  
2 ~~pursuant to~~**UNDER** this section.

3 (10) The holder of an individual's record, if authorized to  
4 release information for clinical purposes by the individual or the  
5 individual's guardian or a parent of a minor, shall release a copy  
6 of the entire medical and clinical record to the provider of mental  
7 health services.