

# HOUSE BILL No. 6078

May 24, 2018, Introduced by Reps. Green, Ellison, Liberati, Gay-Dagnogo and Elder and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled "Mental health code," by amending sections 700 and 740 (MCL 330.1700 and 330.1740), as amended by 1995 PA 290.

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

1           Sec. 700. As used in this chapter, unless the context requires  
2 otherwise:

3           **(A) "CHEMICAL RESTRAINT" MEANS A DRUG THAT IS USED FOR**  
4 **DISCIPLINE OR CONVENIENCE AND IS NOT REQUIRED TO TREAT A DIAGNOSED**  
5 **MEDICAL SYMPTOM. CHEMICAL RESTRAINT MAY INCLUDE A DRUG THAT IS**  
6 **ADMINISTERED TO MANAGE A RESIDENT'S BEHAVIOR IN A WAY THAT REDUCES**  
7 **THE SAFETY RISK TO THE RESIDENT OR OTHERS; A DRUG THAT HAS THE**  
8 **TEMPORARY EFFECT OF RESTRICTING THE RESIDENT'S FREEDOM OF MOVEMENT;**

1 OR A DRUG THAT IS NOT A STANDARD TREATMENT FOR THE RESIDENT'S  
2 MEDICAL OR PSYCHIATRIC CONDITION. AS USED IN THIS SUBDIVISION:

3 (i) "CONVENIENCE" MEANS AN ACTION TAKEN TO CONTROL A  
4 RESIDENT'S BEHAVIOR WITH A LESSER AMOUNT OF EFFORT AND NOT IN THE  
5 RESIDENT'S BEST INTEREST.

6 (ii) "DISCIPLINE" MEANS AN ACTION TAKEN TO PUNISH OR PENALIZE  
7 A RESIDENT.

8 (iii) "MEDICAL SYMPTOM" MEANS AN INDICATION OR CHARACTERISTIC  
9 OF A PHYSICAL OR PSYCHOLOGICAL CONDITION.

10 (B) ~~(a)~~—"Criminal abuse" means 1 or more of the following:

11 (i) An assault that is a violation or an attempt or conspiracy  
12 to commit a violation of sections 81 to 90 of the Michigan penal  
13 code, ~~Act No. 328 of the Public Acts of 1931, being sections 750.81~~  
14 ~~to 750.90 of the Michigan Compiled Laws.~~ **1931 PA 328, MCL 750.81 TO**  
15 **750.90.** Criminal abuse does not include an assault or an assault  
16 and battery that is a violation of section 81 of ~~Act No. 328 of the~~  
17 ~~Public Acts of 1939, being section 750.81 of the Michigan Compiled~~  
18 ~~Laws~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.81,** and that is  
19 committed by a recipient against another recipient.

20 (ii) A criminal homicide that is a violation or an attempt or  
21 conspiracy to commit a violation of section 316, 317, or 321 of ~~Act~~  
22 ~~No. 328 of the Public Acts of 1931, being sections 750.316,~~  
23 ~~750.317, and 750.321 of the Michigan Compiled Laws~~ **THE MICHIGAN**  
24 **PENAL CODE, 1931 PA 328, MCL 750.316, 750.317, AND 750.321.**

25 (iii) Criminal sexual conduct that is a violation or an  
26 attempt or conspiracy to commit a violation of sections 520b to  
27 520e or 520g of ~~Act No. 328 of the Public Acts of 1931, being~~

1 ~~sections 750.520b to 750.520e and 750.520g of the Michigan Compiled~~  
2 ~~Laws~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.520B TO 750.250E**  
3 **AND 750.520G.**

4 (iv) Vulnerable adult abuse that is a violation or an attempt  
5 or conspiracy to commit a violation of section 145n of the Michigan  
6 penal code, ~~Act No. 328 of the Public Acts of 1931, being section~~  
7 ~~750.145n of the Michigan Compiled Laws~~ **1931 PA 328, MCL 750.145N.**

8 (v) Child abuse that is a violation or an attempt or  
9 conspiracy to commit a violation of section 136b of ~~Act No. 328 of~~  
10 ~~the Public Acts of 1931, being section 750.136b of the Michigan~~  
11 ~~Compiled Laws~~ **THE MICHIGAN PENAL CODE, 1931 PA 328, MCL 750.136B.**

12 (C) ~~(b)~~ "Health care corporation" means a nonprofit health  
13 care corporation operating under the nonprofit health care  
14 corporation reform act, ~~Act No. 350 of the Public Acts of 1980,~~  
15 ~~being sections 550.1101 to 550.1704 of the Michigan Compiled Laws~~  
16 **1980 PA 350, MCL 550.1101 TO 550.1704.**

17 (D) ~~(e)~~ "Health care insurer" means an insurer authorized to  
18 provide health insurance in this state or a legal entity that is  
19 self-insured and provides health care benefits to its employees.

20 (E) ~~(d)~~ "Health maintenance organization" means ~~an~~  
21 ~~organization licensed under part 210 of the public health code, Act~~  
22 ~~No. 368 of the Public Acts of 1978, being sections 333.21001 to~~  
23 ~~333.21098 of the Michigan Compiled Laws~~ **THAT TERM AS DEFINED IN**  
24 **SECTION 3501 OF THE INSURANCE CODE OF 1956, 1956 PA 218, MCL**  
25 **500.3501.**

26 (F) ~~(e)~~ "Money" means any legal tender, note, draft,  
27 certificate of deposit, stock, bond, check, or credit card.

1           (G) ~~(f)~~—"Nonprofit dental care corporation" means a dental  
2 care corporation incorporated under Act No. 125 of the Public Acts  
3 of 1963, being sections 550.351 to 550.373 of the Michigan Compiled  
4 Laws 1963 PA 125, MCL 550.351 TO 550.373.

5           (H) ~~(g)~~—"Person-centered planning" means a process for  
6 planning and supporting the individual receiving services that  
7 builds upon the individual's capacity to engage in activities that  
8 promote community life and that honors the individual's  
9 preferences, choices, and abilities. The person-centered planning  
10 process involves families, friends, and professionals as the  
11 individual desires or requires.

12           (I) ~~(h)~~—"Privileged communication" means a communication made  
13 to a psychiatrist or psychologist in connection with the  
14 examination, diagnosis, or treatment of a patient, or to another  
15 person while the other person is participating in the examination,  
16 diagnosis, or treatment or a communication made privileged under  
17 other applicable state or federal law.

18           (J) ~~(i)~~—"Restraint" means the use of a physical device to  
19 restrict an individual's movement. **RESTRAINT INCLUDES CHEMICAL**  
20 **RESTRAINT OR RESTRAINT OR CONTROL BY MEANS OF A DRUG NOT REQUIRED**  
21 **TO TREAT A DIAGNOSED MEDICAL SYMPTOM.** Restraint does not include  
22 the use of a device primarily intended to provide anatomical  
23 support. **AS USED IN THIS SUBDIVISION, "MEDICAL SYMPTOM" MEANS AN**  
24 **INDICATION OR CHARACTERISTIC OR A PHYSICAL OR PSYCHOLOGICAL**  
25 **CONDITION.**

26           (K) ~~(j)~~—"Seclusion" means the temporary placement of a  
27 recipient in a room, alone, where egress is prevented by any means.

1           (l) ~~(k)~~—"Support plan" means a written plan that specifies the  
2 personal support services or any other supports that are to be  
3 developed with and provided for a recipient.

4           (m) ~~(l)~~—"Treatment plan" means a written plan that specifies  
5 the goal-oriented treatment or training services, including  
6 rehabilitation or habilitation services, that are to be developed  
7 with and provided for a recipient.

8           Sec. 740. (1) A resident shall not be placed in physical  
9 restraint **OR CHEMICAL RESTRAINT SHALL NOT BE ADMINISTERED** except in  
10 the circumstances and under the conditions set forth in this  
11 section or in other law.

12           (2) A resident may be restrained only as provided in  
13 subsection (3), (4), or (5) after less restrictive interventions  
14 have been considered, and only if restraint is essential in order  
15 to prevent the resident from physically harming himself, herself,  
16 or others, or in order to prevent him or her from causing  
17 substantial property damage. Consideration of less restrictive  
18 measures ~~shall~~ **MUST** be documented in the medical record. If  
19 restraint is essential in order to prevent the resident from  
20 physically harming himself, herself, or others, the resident may be  
21 physically held with no more force than is necessary to limit the  
22 resident's movement, until a restraint may be applied.

23           (3) A resident may be temporarily restrained for a maximum of  
24 30 minutes without an order or authorization in an emergency.  
25 Immediately after imposition of the temporary restraint, a  
26 physician ~~shall~~ **MUST** be contacted. If, after being contacted, the  
27 physician does not order or authorize the restraint, the restraint

1 ~~shall~~**MUST** be removed.

2 (4) A resident may be restrained ~~prior to~~**BEFORE** examination  
3 ~~pursuant~~**ACCORDING** to an authorization by a physician. An  
4 authorized restraint may continue only until a physician can  
5 personally examine the resident or for 2 hours, whichever is less.  
6 If it is not possible for the physician to examine the resident  
7 within 2 hours, a physician may reauthorize the restraint for  
8 another 2 hours. Authorized restraint may not continue for more  
9 than 4 hours.

10 (5) A resident may be restrained ~~pursuant~~**ACCORDING** to an  
11 order by a physician made after personal examination of the  
12 resident. An ordered restraint shall continue only for that period  
13 of time specified in the order or for 8 hours, whichever is less.

14 (6) A restrained resident shall continue to receive food,  
15 shall be kept in sanitary conditions, shall be clothed or otherwise  
16 covered, shall be given access to toilet facilities, and shall be  
17 given the opportunity to sit or lie down.

18 (7) Restraints ~~shall~~**A RESTRAINT MUST** be removed every 2 hours  
19 for not less than 15 minutes unless medically contraindicated or  
20 whenever ~~they are~~**THE RESTRAINT IS** no longer essential in order to  
21 achieve the objective ~~which~~**THAT** justified ~~their~~**THE** initial  
22 application **OF THE RESTRAINT. PHYSICAL RESTRAINT AND CHEMICAL**  
23 **RESTRAINT SHALL NOT BE USED AT THE SAME TIME ON A RESIDENT.**  
24 **CHEMICAL RESTRAINT SHALL BE APPLIED ONLY AFTER PHYSICAL RESTRAINT**  
25 **HAS BEEN ATTEMPTED AND WAS UNSUCCESSFUL.**

26 (8) Each instance of restraint requires full justification for  
27 its application, and the results of each periodic examination shall

1 be placed promptly in the record of the resident.

2 (9) If a resident is restrained repeatedly, the resident's  
3 individual plan of services shall be reviewed and modified to  
4 facilitate the reduction of the use of restraints.

5 Enacting section 1. This amendatory act takes effect 90 days  
6 after the date it is enacted into law.