MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

CHAPTER 7

RIGHTS OF RECIPIENTS OF MENTAL HEALTH SERVICES

330.1700 Definitions.

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

(a) "Criminal abuse" means 1 or more of the following:

(*i*) An assault that is a violation or an attempt or conspiracy to commit a violation of sections 81 to 90 of the Michigan penal code, Act No. 328 of the Public Acts of 1931, being sections 750.81 to 750.90 of the Michigan Compiled Laws. Criminal abuse does not include an assault or an assault and battery that is a violation of section 81 of Act No. 328 of the Public Acts of 1939, being section 750.81 of the Michigan Compiled Laws, and that is committed by a recipient against another recipient.

(*ii*) A criminal homicide that is a violation or an attempt or conspiracy to commit a violation of section 316, 317, or 321 of Act No. 328 of the Public Acts of 1931, being sections 750.316, 750.317, and 750.321 of the Michigan Compiled Laws.

(*iii*) Criminal sexual conduct that is a violation or an attempt or conspiracy to commit a violation of sections 520b to 520e or 520g of Act No. 328 of the Public Acts of 1931, being sections 750.520b to 750.520e and 750.520g of the Michigan Compiled Laws.

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

(*v*) Child abuse that is a violation or an attempt or conspiracy to commit a violation of section 136b of Act No. 328 of the Public Acts of 1931, being section 750.136b of the Michigan Compiled Laws.

(b) "Health care corporation" means a nonprofit health care corporation operating under the nonprofit health care corporation reform act, Act No. 350 of the Public Acts of 1980, being sections 550.1101 to 550.1704 of the Michigan Compiled Laws.

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

(d) "Health maintenance organization" means an organization licensed under part 210 of the public health code, Act No. 368 of the Public Acts of 1978, being sections 333.21001 to 333.21098 of the Michigan Compiled Laws.

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

(f) "Nonprofit dental care corporation" means a dental care corporation incorporated under Act No. 125 of the Public Acts of 1963, being sections 550.351 to 550.373 of the Michigan Compiled Laws.

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

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

(i) "Restraint" means the use of a physical device to restrict an individual's movement. Restraint does not include the use of a device primarily intended to provide anatomical support.

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

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

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

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1702 Receipt of mental health services; rights, benefits, privileges, and competency not affected.

Sec. 702. (1) The receipt of mental health services, a determination that an individual meets the criteria of a person requiring treatment or for judicial admission, or any form of admission to a facility including by

judicial order shall not be used to deprive an individual of his or her rights, benefits, or privileges.

(2) The receipt of mental health services, a determination that an individual meets the criteria of a person requiring treatment or for judicial admission, or any form of admission to a facility including by judicial order does not constitute a determination or adjudication that the individual is incompetent as that term is used in other statutes.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1704 Rights of recipient.

Sec. 704. (1) In addition to the rights, benefits, and privileges guaranteed by other provisions of law, the state constitution of 1963, and the constitution of the United States, a recipient of mental health services shall have the rights guaranteed by this chapter unless otherwise restricted by law.

(2) The rights enumerated in this chapter shall not be construed to replace or limit any other rights, benefits, or privileges of a recipient of services including the right to treatment by spiritual means if requested by the recipient, parent, or guardian.

(3) The provisions of this chapter shall be construed to protect and promote the dignity and respect to which a recipient of services is entitled.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1705 Second opinion.

Sec. 705. (1) If an applicant for community mental health services has been denied mental health services, the applicant, his or her guardian if one has been appointed, or the applicant's parent or parents if the applicant is a minor may request a second opinion of the executive director. The executive director shall secure the second opinion from a physician, licensed psychologist, registered professional nurse, or master's level social worker, or master's level psychologist.

(2) If the individual providing the second opinion determines that the applicant has a serious mental illness, serious emotional disturbance, or a developmental disability, or is experiencing an emergency situation or urgent situation, the community mental health services program shall direct services to the applicant.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1706 Notice of rights.

Sec. 706. Except as provided in section 707, applicants for and recipients of mental health services and in the case of minors, the applicant's or recipient's parent or guardian, shall be notified by the providers of those services of the rights guaranteed by this chapter. Notice shall be accomplished by providing an accurate summary of this chapter and chapter 7a to the applicant or recipient at the time services are first requested and by having a complete copy of this chapter and chapter 7a readily available for review by applicants and recipients.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1706a Pamphlet; preparation; distribution; contents.

Sec. 706a. (1) The department shall prepare and distribute to each community mental health services program copies of a pamphlet containing information regarding resources available to individuals with serious mental illness and their families. The information shall include a description of advocacy and support groups, and other information of interest to recipients and their families. The pamphlet shall include the name, address, and telephone number of the organization designated by the governor under section 931 to provide protection and advocacy for individuals with developmental disability or mental illness.

(2) A community mental health services program shall distribute the pamphlet described in subsection (1) to each recipient receiving services through the community mental health services program and, if applicable, to the recipient's guardian or the parent of a minor recipient.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1707 Rights of minor.

Sec. 707. (1) A minor 14 years of age or older may request and receive mental health services and a mental health professional may provide mental health services, on an outpatient basis, excluding pregnancy termination referral services and the use of psychotropic drugs, without the consent or knowledge of the minor's parent, guardian, or person in loco parentis. Except as otherwise provided in this section, the minor's parent, guardian, or person in loco parentis shall not be informed of the services without the consent of the minor unless the mental health professional treating the minor determines that there is a compelling need for disclosure based on a substantial probability of harm to the minor or to another individual, and if the minor is

notified of the mental health professional's intent to inform the minor's parent, guardian, or person in loco parentis.

(2) Services provided to a minor under this section shall, to the extent possible, promote the minor's relationship to the parent, guardian, or person in loco parentis, and shall not undermine the values that the parent, guardian, or person in loco parentis has sought to instill in the minor.

(3) Services provided to a minor under this section shall be limited to not more than 12 sessions or 4 months per request for services. After the twelfth session or fourth month of services the mental health professional shall terminate the services or, with the consent of the minor, notify the parent, guardian, or person in loco parentis to obtain consent to provide further outpatient services.

(4) The minor's parent, guardian, or person in loco parentis is not liable for the costs of services that are received by a minor under subsection (1).

(5) This section does not relieve a mental health professional from his or her duty to report suspected child abuse or neglect under section 3 of the child protection law, Act No. 238 of the Public Acts of 1975, being section 722.623 of the Michigan Compiled Laws.

History: Add. 1984, Act 186, Imd. Eff. July 3, 1984;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1708 Suitable services; treatment environment; setting; rights.

Sec. 708. (1) A recipient shall receive mental health services suited to his or her condition.

(2) Mental health services shall be provided in a safe, sanitary, and humane treatment environment.

(3) Mental health services shall be offered in the least restrictive setting that is appropriate and available.

(4) A recipient has the right to be treated with dignity and respect.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1710 Physical and mental examination; reexamination.

Sec. 710. Within 24 hours after admission, each resident of a hospital or center shall receive a comprehensive physical and mental examination. Each resident shall be periodically reexamined not less often than annually.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1711 Rights of family members.

Sec. 711. Family members of recipients shall be treated with dignity and respect. They shall be given an opportunity to provide information to the treating professionals. They shall also be provided an opportunity to request and receive educational information about the nature of disorders, medications and their side effects, available support services, advocacy and support groups, financial assistance and coping strategies.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1712 Individualized written plan of services.

Sec. 712. (1) The responsible mental health agency for each recipient shall ensure that a person-centered planning process is used to develop a written individual plan of services in partnership with the recipient. A preliminary plan shall be developed within 7 days of the commencement of services or, if an individual is hospitalized for less than 7 days, before discharge or release. The individual plan of services shall consist of a treatment plan, a support plan, or both. A treatment plan shall establish meaningful and measurable goals with the recipient. The individual plan of services shall address, as either desired or required by the recipient, the recipient's need for food, shelter, clothing, health care, employment opportunities, educational opportunities, legal services, transportation, and recreation. The plan shall be kept current and shall be modified when indicated. The individual in charge of implementing the plan of services shall be designated in the plan.

(2) If a recipient is not satisfied with his or her individual plan of services, the recipient, the person authorized by the recipient to make decisions regarding the individual plan of services, the guardian of the recipient, or the parent of a minor recipient may make a request for review to the designated individual in charge of implementing the plan. The review shall be completed within 30 days and shall be carried out in a manner approved by the appropriate governing body.

(3) An individual chosen or required by the recipient may be excluded from participation in the planning process only if inclusion of that individual would constitute a substantial risk of physical or emotional harm to the recipient or substantial disruption of the planning process. Justification for an individual's exclusion shall be documented in the case record.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 1996, Act 588, Imd. Eff. Jan. 21, 1997.

330.1713 Choice of physician or mental health professional.

Sec. 713. A recipient shall be given a choice of physician or other mental health professional in accordance with the policies of the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital providing services and within the limits of available staff in the community mental health services program, licensed hospital, or service provider under contract with the community mental health services program, or licensed hospital.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1714 Informing resident of clinical status and progress.

Sec. 714. A recipient shall be informed orally and in writing of his or her clinical status and progress at reasonable intervals established in the individual plan of services in a manner appropriate to his or her clinical condition.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1715 Services of mental health professional.

Sec. 715. If a resident is able to secure the services of a mental health professional, he or she shall be allowed to see the professional at any reasonable time.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1716 Surgery; consent.

Sec. 716. (1) Except as provided in subsections (2) and (3), a recipient of mental health services shall not have surgery performed upon him or her unless consent is obtained from 1 of the following:

(a) The recipient if he or she is 18 years of age or over and does not have a guardian for medical purposes.

(b) The guardian of the recipient if the guardian is legally empowered to execute a consent to surgery.

(c) The parent of the recipient who has legal and physical custody of the recipient, if the recipient is less than 18 years of age.

(d) The representative authorized to consent under a durable power of attorney or other advance directive.

(2) If the life of a recipient is threatened and there is not time to obtain consent, surgery may be performed without consent after the medical necessity for the procedure has been documented and the documentation has been entered into the record of the recipient.

(3) If surgery is considered advisable for a recipient, and if no one eligible under subsection (1) to give consent can be found after diligent effort, a probate court may, upon petition and after hearing, consent to performance of the surgery in lieu of the individual eligible to give consent.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1717 Electroconvulsive therapy or other procedure; consent.

Sec. 717. (1) A recipient shall not be the subject of electroconvulsive therapy or a procedure intended to produce convulsions or coma unless consent is obtained from the following:

(a) The recipient, if he or she is 18 years of age or older and does not have a guardian for medical purposes.

(b) The recipient's parent who has legal and physical custody of the recipient, if the recipient is less than 18 years of age.

(c) The recipient's guardian, if the guardian has power to execute a consent to procedures described in this section.

(d) The recipient's designated representative, if a durable power of attorney or other advance directive grants the representative authority to consent to procedures described in this section.

(2) If a guardian consents to a procedure described in this section, the procedure shall not be initiated until 2 psychiatrists have examined the recipient and documented in the recipient's medical record their concurrence with the decision to administer the procedure.

(3) If a parent or guardian of a minor consents to a procedure described in this section, the procedure shall not be initiated until 2 child and adolescent psychiatrists, neither of whom may be the treating psychiatrist, have examined the minor and documented in the minor's medical record their concurrence with the decision to administer the procedure.

(4) A minor or an advocate designated by the minor may object to the administration of a procedure described in this section. The objection shall be made either orally or in writing to the probate court. The procedure shall not be initiated before a court hearing on the minor's or advocate's objection.

(5) At least 72 hours, excluding Sundays or holidays, before the initiation of a procedure described in this section, a minor shall be informed that he or she has a right to object to the procedure.

(6) If a procedure described in this section is considered advisable for a recipient and an individual eligible

to give consent for the procedure is not located after diligent effort, a probate court may, upon petition and after a hearing, consent to administration of the procedure in lieu of the individual eligible to give consent.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1718 Psychotropic drugs.

Sec. 718. Psychotropic drugs shall not be administered to an individual who has been hospitalized by medical certification or by petition under chapter 4 or 5 on the day preceding and on the day of his or her court hearing unless the individual consents or unless the administration of the psychotropic drugs is necessary to prevent physical injury to the individual or others.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1719 Psychotropic drug treatment; duties of prescriber or licensed health professional.

Sec. 719. Before initiating a course of psychotropic drug treatment for a recipient, the prescriber or a licensed health professional acting under the delegated authority of the prescriber shall do both of the following:

(a) Explain the specific risks and the most common adverse effects that have been associated with that drug.

(b) Provide the individual with a written summary of the most common adverse effects associated with that drug.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 1996, Act 588, Imd. Eff. Jan. 21, 1997.

330.1720 Statistical report of deaths.

Sec. 720. The department shall provide an annual statistical report to the members of the house and senate standing committees and appropriations subcommittees with legislative oversight of mental health issues summarizing all deaths and causes of deaths, if known of mental health care recipients that have been reported to the department and all deaths that have occurred in state facilities.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

Compiler's note: Former MCL 330.1720, which pertained to facility standards report, was repealed by Act 302 of 1986, Imd. Eff. Dec. 22, 1986.

330.1722 Protection of recipient from abuse or neglect.

Sec. 722. (1) A recipient of mental health services shall not be subjected to abuse or neglect.

(2) The department, each community mental health services program, each licensed hospital, and each service provider under contract with the department, community mental health services program, or licensed hospital shall ensure that appropriate disciplinary action is taken against those who have engaged in abuse or neglect.

(3) A recipient of mental health services who is abused or neglected has a right to pursue injunctive and other appropriate civil relief.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1723 Suspected abuse of recipient or resident; report to law enforcement agency.

Sec. 723. (1) A mental health professional, a person employed by or under contract to the department, a licensed facility, or a community mental health services program, or a person employed by a provider under contract to the department, a licensed facility, or a community mental health services program who has reasonable cause to suspect the criminal abuse of a recipient immediately shall make or cause to be made, by telephone or otherwise, an oral report of the suspected criminal abuse to the law enforcement agency for the county or city in which the criminal abuse is suspected to have occurred or to the state police.

(2) Within 72 hours after making the oral report, the reporting individual shall file a written report with the law enforcement agency to which the oral report was made, and with the chief administrator of the facility or agency responsible for the recipient.

(3) The written report required by subsection (2) shall contain the name of the recipient and a description of the criminal abuse and other information available to the reporting individual that might establish the cause of the criminal abuse and the manner in which it occurred. The report shall become a part of the recipient's clinical record. Before the report becomes part of the recipient's clinical record, the names of the reporting individual and the individual accused of committing the criminal abuse, if contained in the report, shall be deleted.

(4) The identity of an individual who makes a report under this section is confidential and is not subject to disclosure without the consent of that individual or by order or subpoena of a court of record. An individual

acting in good faith who makes a report of criminal abuse against a recipient is immune from civil or criminal liability that might otherwise be incurred. The immunity from civil or criminal liability granted by this subsection extends only to acts done under this section and does not extend to a negligent act that causes personal injury or death.

(5) An individual who makes a report under this section in good faith shall not be dismissed or otherwise penalized by an employer or contractor for making the report.

(6) This section does not relieve an individual from the duty to report criminal abuse under other applicable law.

(7) The department, a community mental health services program, a licensed facility, and a service provider under contract with the department, community mental health services program, or licensed facility shall cooperate in the prosecution of appropriate criminal charges against those who have engaged in criminal abuse.

(8) Except as otherwise provided in subsection (5), this section does not preclude nor hinder the department, a licensed facility, a community mental health services program, or a service provider under contract to the department, a licensed facility, or a community mental health services program from investigating reported claims of criminal abuse of a recipient by its employees, and from taking appropriate disciplinary action against its employees based upon that investigation.

(9) This section does not require a person to report suspected criminal abuse if either of the following applies:

(a) The individual has knowledge that the incident of suspected criminal abuse has been reported to the appropriate law enforcement agency as provided in this section.

(b) The suspected criminal abuse occurred more than 1 year before the date on which it first became known to an individual who would otherwise be required to make a report.

(10) This section does not require an individual required to report suspected criminal abuse under subsection (1) to disclose confidential information or a privileged communication except under 1 or both of the following circumstances:

(a) If the suspected criminal abuse is alleged to have been committed or caused by a mental health professional, an individual employed by or under contract to the department, a licensed facility, or a community mental health services program, or an individual employed by a service provider under contract to the department, a licensed facility, or a community mental health services program.

(b) If the suspected criminal abuse is alleged to have been committed in 1 of the following:

(*i*) A state facility or a licensed facility.

(*ii*) A county community mental health services program site.

(*iii*) The work site of an individual employed by or under contract to the department, a licensed facility, or a community mental health services program or a provider under contract to the department, a licensed facility, or a community mental health services program.

(*iv*) A place where a recipient is under the supervision of an individual employed by or under contract to the department, a licensed facility, a community mental health services program, or a provider under contract to the department, a licensed facility, or a community mental health services program.

History: Add. 1986, Act 224, Eff. Mar. 31, 1987;—Am. 1988, Act 32, Imd. Eff. Feb. 25, 1988;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1723a Appointment of guardian ad litem.

Sec. 723a. The court with jurisdiction in each case resulting from a report made under section 723 shall appoint a guardian ad litem for the recipient.

History: Add. 1986, Act 224, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1723b Report by person not employed by or under contract to department, facility, or community mental health services program.

Sec. 723b. Section 723 does not prohibit an individual who is not employed by or under contract to the department, a licensed facility, or a community mental health services program and who has reasonable cause to suspect the criminal abuse of a recipient from making a report to the appropriate law enforcement agency or to the department or community mental health services program.

History: Add. 1986, Act 224, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1723c Violation of MCL 330.1723 or making of false report as misdemeanor; civil liability.

Sec. 723c. (1) An individual who intentionally violates section 723 or who knowingly makes a false report pursuant to section 723 is guilty of a misdemeanor.

(2) An individual who violates section 723 is civilly liable for the damages proximately caused by the violation.

History: Add. 1986, Act 224, Eff. Mar. 31, 1987;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1724 Fingerprints, photographs, audiorecording, or use of 1-way glass.

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.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1975, Act 208, Imd. Eff. Aug. 21, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2012, Act 508, Eff. Mar. 28, 2013.

330.1726 Communication by mail and telephone; visits.

Sec. 726. (1) A resident is entitled to unimpeded, private, and uncensored communication with others by mail and telephone and to visit with persons of his or her choice, except in the circumstances and under the conditions set forth in this section.

(2) Each facility shall endeavor to implement the rights guaranteed by subsection (1) by making telephones reasonably accessible, by ensuring that correspondence can be conveniently and confidentially received and mailed, and by making space for visits available. Writing materials, telephone usage funds, and postage shall be provided in reasonable amounts to residents who are unable to procure such items.

(3) Reasonable times and places for the use of telephones and for visits may be established and, if established, shall be in writing and posted in each living unit of a residential program.

(4) The right of a resident to communicate by mail or telephone or receive visitors shall not be further limited except as authorized in the resident's individual plan of services.

(5) A limitation upon the rights guaranteed by subsection (1) shall not apply between a resident and an attorney or a court, or between a resident and other individuals if the communication involves matters that are or may be the subject of legal inquiry.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1728 Personal property.

Sec. 728. (1) A resident is entitled to receive, possess, and use all personal property, including clothing, except in the circumstances and under the conditions set forth in this section.

(2) Each facility shall provide a reasonable amount of storage space to each resident for his or her clothing and other personal property. The resident shall be permitted to inspect personal property at reasonable times.

(3) A facility may exclude particular kinds of personal property from the facility. Any exclusions shall be officially adopted and shall be in writing and posted in each residential unit.

(4) The individual in charge of the plan of services for a resident may limit the rights guaranteed by subsection (1) if each limitation is essential for 1 of the following purposes:

(a) In order to prevent theft, loss, or destruction of the property, unless a waiver is signed by the resident.

(b) In order to prevent the resident from physically harming himself, herself, or others.

(5) A limitation adopted under the authority of subsection (4), the date it expires, and justification for its adoption shall be promptly noted in the record of the resident.

(6) A limitation adopted under the authority of subsection (4) shall be removed when the circumstance that justified its adoption ceases to exist.

(7) A receipt shall be given to a resident and an individual designated by the resident for any of his or her personal property taken into the possession of the facility. Any personal property in the possession of a facility at the time the resident to whom the property belongs is released from the facility shall be returned to the resident.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1730 Money.

Sec. 730. (1) The department shall establish policies and procedures designed to ensure that money in the accounts of residents of a state facility are safeguarded against theft, loss, or misappropriation.

(2) A state facility may require that all money that is on the person of a resident, that comes to a resident, or that the facility receives on behalf of the resident under a benefit arrangement or otherwise, be turned over to the facility for safekeeping. The money shall be accounted for in the name of the resident and recorded periodically in the records of the resident. Upon request, money accounted for in the name of a resident shall be turned over to a legal guardian of the resident if the guardian has such authority.

(3) A resident of a state facility is entitled to easy access to the money in his or her account and to spend or otherwise use the money as he or she chooses, except as provided in policies and procedures of the department established under subsection (1). Policies and procedures shall be established in writing for each state facility giving residents easy access to the money in their accounts and enabling residents to spend or otherwise use their money as they choose.

(4) Money accounted for in the name of a resident of a state facility may be deposited with a financial

institution. Any earnings attributable to money in an account of a resident shall be credited to that account.

(5) All money, including any earnings, in an account of a resident of a state facility shall be delivered to the resident upon his or her release from the facility.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1732 Accepting funds for use of resident.

Sec. 732. A state facility may accept funds that a parent, guardian, or other individual wishes to provide for the use or benefit of a resident of the facility. Unless otherwise restricted by law, the possession and use of funds so provided are governed by section 730, the individual plan of services, and any additional directions given by the provider of the funds.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1734 Facility as representative payee or fiduciary.

Sec. 734. In the absence of any other responsible party, a state facility may accept an appointment to serve as a representative payee, fiduciary, or in a similar capacity for payments to a resident under a public or private benefit arrangement unless otherwise restricted by law. Funds received under that arrangement are subject to section 730 except to the extent laws or regulations governing payment of the benefits provide otherwise.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1736 Performance of labor by resident.

Sec. 736. (1) A resident may perform labor that contributes to the operation and maintenance of the facility for which the facility would otherwise employ someone only if the resident voluntarily agrees to perform the labor, engaging in the labor would not be inconsistent with the individual plan of services for the resident, and the amount of time or effort necessary to perform the labor would not be excessive. In no event shall discharge or privileges be conditioned upon the performance of such labor.

(2) A resident who performs labor that contributes to the operation and maintenance of the facility for which the facility would otherwise employ someone shall be compensated appropriately and in accordance with applicable federal and state labor laws, including minimum wage and minimum wage reduction provisions.

(3) A resident who performs labor other than that described in subsection (2) shall be compensated an appropriate amount if an economic benefit to another individual or agency results from his or her labor.

(4) The governing body of the facility may provide for compensation of a resident when he or she performs labor not governed by subsection (2) or (3).

(5) Subsections (1), (2), and (3) do not apply to labor of a personal housekeeping nature or labor performed as a condition of residence in a small group living arrangement.

(6) One-half of any compensation paid to a resident under this section is exempt from collection under this act as payment for services rendered.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1738 Repealed. 1995, Act 290, Eff. Mar. 28, 1996.

Compiler's note: The repealed section pertained to right to education.

330.1740 Physical restraint.

Sec. 740. (1) A resident shall not be placed in physical restraint except in the circumstances and under the conditions set forth in this section or in other law.

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

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

(4) A resident may be restrained prior to examination pursuant to an authorization by a physician. An

authorized restraint may continue only until a physician can personally examine the resident or for 2 hours, whichever is less. If it is not possible for the physician to examine the resident within 2 hours, a physician may reauthorize the restraint for another 2 hours. Authorized restraint may not continue for more than 4 hours.

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

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

(7) Restraints shall be removed every 2 hours for not less than 15 minutes unless medically contraindicated or whenever they are no longer essential in order to achieve the objective which justified their initial application.

(8) Each instance of restraint requires full justification for its application, and the results of each periodic examination shall be placed promptly in the record of the resident.

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

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1742 Seclusion.

Sec. 742. (1) Seclusion shall be used only in a hospital, a center, or a child caring institution licensed under 1973 PA 116, MCL 722.111 to 722.128. A resident placed in a hospital or center shall not be kept in seclusion except in the circumstances and under the conditions set forth in this section.

(2) A minor placed in a child caring institution shall not be placed or kept in seclusion except as provided in 1973 PA 116, MCL 722.111 to 722.128, or rules promulgated under that act.

(3) A resident may be placed in seclusion only as provided under subsection (4), (5), or (6) and only if it is essential in order to prevent the resident from physically harming others, or in order to prevent the resident from causing substantial property damage.

(4) Seclusion may be temporarily employed for a maximum of 30 minutes in an emergency without an authorization or an order. Immediately after the resident is placed in temporary seclusion, a physician shall be contacted. If, after being contacted, the physician does not authorize or order the seclusion, the resident shall be removed from seclusion.

(5) A resident may be placed in seclusion under an authorization by a physician. Authorized seclusion shall continue only until a physician can personally examine the resident or for 1 hour, whichever is less.

(6) A resident may be placed in seclusion under an order of a physician made after personal examination of the resident to determine if the ordered seclusion poses an undue health risk to the resident. Ordered seclusion shall continue only for that period of time specified in the order or for 8 hours, whichever is less. An order for a minor shall continue for a maximum of 4 hours.

(7) A secluded resident shall continue to receive food, shall remain clothed unless his or her actions make it impractical or inadvisable, shall be kept in sanitary conditions, and shall be provided a bed or similar piece of furniture unless his or her actions make it impractical or inadvisable.

(8) A secluded resident shall be released from seclusion whenever the circumstance that justified its use ceases to exist.

(9) Each instance of seclusion requires full justification for its use, and the results of each periodic examination shall be placed promptly in the record of the resident.

(10) If a resident is secluded repeatedly, the resident's individual plan of services shall be reviewed and modified to facilitate the reduced use of seclusion.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 1996, Act 588, Imd. Eff. Jan. 21, 1997;—Am. 2004, Act 527, Imd. Eff. Jan. 3, 2005.

330.1744 Freedom of movement.

Sec. 744. (1) The freedom of movement of a recipient shall not be restricted more than is necessary to provide mental health services to him or her, to prevent injury to him or her or to others, or to prevent substantial property damage, except that security precautions appropriate to the condition and circumstances of an individual admitted by order of a criminal court or transferred as a sentence-serving convict from a penal institution may be taken.

(2) A restriction adopted under the authority of subsection (1), the date it expires, and justification for its adoption shall be promptly noted in the record of the recipient.

(3) A restriction adopted under the authority of subsection (1) shall be removed when the circumstance that justified its adoption ceases to exist.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1746 Record.

Sec. 746. (1) A complete record shall be kept current for each recipient of mental health services. The record shall at least include information pertinent to the services provided to the recipient, pertinent to the legal status of the recipient, required by this chapter or other provision of law, and required by rules or policies.

(2) The material in the record shall be confidential to the extent it is made confidential by section 748.

History: 1974, Act 258, Eff. Aug. 6, 1975.

330.1748 Confidentiality.

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

(2) If information made confidential by this section is disclosed, the identity of the individual to whom it pertains shall be protected and shall not be disclosed unless it is germane to the authorized purpose for which disclosure was sought. When practicable, no other information shall be disclosed unless it is germane to the authorized purpose for which disclosure was sought.

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

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

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

(a) Under an order or a subpoena of a court of record or a subpoena of the legislature, unless the information is privileged by law.

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

(c) To an attorney for the recipient, with the consent of the recipient, the recipient's guardian with authority to consent, or the parent with legal and physical custody of a minor recipient.

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

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

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

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

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

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

(b) The recipient or his or her guardian or the parent of a minor recipient or another individual or agency unless in the written judgment of the holder the disclosure would be detrimental to the recipient or others.

(7) Information may be disclosed by the holder of the record under 1 or more of the following circumstances:

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

(b) As necessary for treatment, coordination of care, or payment for the delivery of mental health services, in accordance with the health insurance portability and accountability act of 1996, Public Law 104-191.

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

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

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

(a) A recipient, if the recipient, the recipient's guardian with authority to consent, or a minor recipient's parent with legal and physical custody of the recipient has consented to the access.

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

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

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

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

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

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

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

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

(9) The records, data, and knowledge collected for or by individuals or committees assigned a peer review function, including the review function under section 143a(1), are confidential, shall be used only for the purposes of peer review, are not public records, and are not subject to court subpoena. This subsection does not prevent disclosure of individual case records under this section.

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

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1982, Act 236, Imd. Eff. Sept. 22, 1982;—Am. 1986, Act 50, Imd. Eff. Mar. 17, 1986;—Am. 1987, Act 192, Imd. Eff. Dec. 2, 1987;—Am. 1990, Act 167, Imd. Eff. July 2, 1990;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 1996, Act 588, Imd. Eff. Jan. 21, 1997;—Am. 1998, Act 497, Eff. Mar. 1, 1999;—Am. 2016, Act 559, Eff. Apr. 10, 2017.

330.1748a Child abuse or neglect investigation; request for mental health records and information; immunity from civil or administrative liability; imposition of duties under another statute.

Sec. 748a. (1) If there is a compelling need for mental health records or information to determine whether child abuse or child neglect has occurred or to take action to protect a minor where there may be a substantial risk of harm, a family independence agency caseworker or administrator directly involved in the child abuse or neglect investigation shall notify a mental health professional that a child abuse or neglect investigation has been initiated involving a person who has received services from the mental health professional and shall request in writing mental health records and information that are pertinent to that investigation. Upon receipt of this notification and request, the mental health professional shall review all mental health records and information in the mental health professional's possession to determine if there are mental health records or information that is pertinent to that investigation. Within 14 days after receipt of a request made under this subsection, the mental health professional shall release those pertinent mental health records and information to the caseworker or administrator directly involved in the child abuse or neglect investigation.

(2) The following privileges do not apply to mental health records or information to which access is given under this section:

(a) The physician-patient privilege created in section 2157 of the revised judicature act of 1961, 1961 PA 236, MCL 600.2157.

(b) The dentist-patient privilege created in section 16648 of the public health code, 1978 PA 368, MCL 333.16648.

(c) The licensed professional counselor-client and limited licensed counselor-client privilege created in

section 18117 of the public health code, 1978 PA 368, MCL 333.18117.

(d) The psychologist-patient privilege created in section 18237 of the public health code, 1978 PA 368, MCL 333.18237.

(e) Any other health professional-patient privilege created or recognized by law.

(3) To the extent not protected by the immunity conferred by 1964 PA 170, MCL 691.1401 to 691.1415, an individual who in good faith gives access to mental health records or information under this section is immune from civil or administrative liability arising from that conduct, unless the conduct was gross negligence or willful and wanton misconduct.

(4) A duty under this act relating to child abuse and neglect does not alter a duty imposed under another statute, including the child protection law, 1975 PA 238, MCL 722.621 to 722.638, regarding the reporting or investigation of child abuse or neglect.

History: Add. 1998, Act 497, Eff. Mar. 1, 1999.

330.1749 Statement correcting or amending information.

Sec. 749. A recipient, guardian, or parent of a minor recipient, after having gained access to treatment records, may challenge the accuracy, completeness, timeliness, or relevance of factual information in the recipient's record. The recipient, guardian, or parent of a minor recipient shall be allowed to insert into the record a statement correcting or amending the information at issue. The statement shall become part of the record.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1750 Privileged communications.

Sec. 750. (1) Privileged communications shall not be disclosed in civil, criminal, legislative, or administrative cases or proceedings, or in proceedings preliminary to such cases or proceedings, unless the patient has waived the privilege, except in the circumstances set forth in this section.

(2) Privileged communications shall be disclosed upon request under 1 or more of the following circumstances:

(a) If the privileged communication is relevant to a physical or mental condition of the patient that the patient has introduced as an element of the patient's claim or defense in a civil or administrative case or proceeding or that, after the death of the patient, has been introduced as an element of the patient's claim or defense by a party to a civil or administrative case or proceeding.

(b) If the privileged communication is relevant to a matter under consideration in a proceeding governed by this act, but only if the patient was informed that any communications could be used in the proceeding.

(c) If the privileged communication is relevant to a matter under consideration in a proceeding to determine the legal competence of the patient or the patient's need for a guardian but only if the patient was informed that any communications made could be used in such a proceeding.

(d) In a civil action by or on behalf of the patient or a criminal action arising from the treatment of the patient against the mental health professional for malpractice.

(e) If the privileged communication was made during an examination ordered by a court, prior to which the patient was informed that a communication made would not be privileged, but only with respect to the particular purpose for which the examination was ordered.

(f) If the privileged communication was made during treatment that the patient was ordered to undergo to render the patient competent to stand trial on a criminal charge, but only with respect to issues to be determined in proceedings concerned with the competence of the patient to stand trial.

(3) In a proceeding in which subsections (1) and (2) prohibit disclosure of a communication made to a psychiatrist or psychologist in connection with the examination, diagnosis, or treatment of a patient, the fact that the patient has been examined or treated or undergone a diagnosis also shall not be disclosed unless that fact is relevant to a determination by a health care insurer, health care corporation, nonprofit dental care corporation, or health maintenance organization of its rights and liabilities under a policy, contract, or certificate of insurance or health care benefits.

(4) Privileged communications may be disclosed under section 946 to comply with the duty set forth in that section.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1984, Act 362, Eff. Mar. 29, 1985;—Am. 1989, Act 123, Eff. Sept. 1, 1989;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1752 Policies and procedures.

Sec. 752. (1) The department, each community mental health services program, each licensed hospital, and each service provider under contract with the department, a community mental health services program, or a

licensed hospital shall establish written policies and procedures concerning recipient rights and the operation of an office of recipient rights. The policies and procedures shall provide a mechanism for prompt reporting, review, investigation, and resolution of apparent or suspected violations of the rights guaranteed by this chapter, shall be consistent with this chapter and chapter 7a, and shall be designed to protect recipients from, and prevent repetition of, violations of rights guaranteed by this chapter and chapter 7a. The policies and procedures shall include, at a minimum, all of the following:

(a) Complaint and appeal processes.

(b) Consent to treatment and services.

(c) Sterilization, contraception, and abortion.

(d) Fingerprinting, photographing, audiotaping, and use of 1-way glass.

(e) Abuse and neglect, including detailed categories of type and severity.

(f) Confidentiality and disclosure.

(g) Treatment by spiritual means.

(h) Qualifications and training for recipient rights staff.

(i) Change in type of treatment.

(j) Medication procedures.

(k) Use of psychotropic drugs.

(*l*) Use of restraint.

(m) Right to be treated with dignity and respect.

(n) Least restrictive setting.

(o) Services suited to condition.

(p) Policies and procedures that address all of the following matters with respect to residents:

(*i*) Right to entertainment material, information, and news.

(*ii*) Comprehensive examinations.

(*iii*) Property and funds.

(*iv*) Freedom of movement.

(*v*) Resident labor.

(*vi*) Communication and visits.

(*vii*) Use of seclusion.

(2) All policies and procedures required by this section shall be established within 12 months after the effective date of the amendatory act that added section 753.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996.

330.1753 Recipient rights system; review by department.

Sec. 753. The department shall review the recipient rights system of each community mental health services program in accordance with standards established under section 232a, to ensure a uniformly high standard of recipient rights protection throughout the state. For purposes of certification review, the department shall have access to all information pertaining to the rights protections system of the community mental health services program.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1754 State office of recipient rights; establishment by department; selection of director; powers and authority of state office of recipient rights.

Sec. 754. (1) The department shall establish a state office of recipient rights subordinate only to the director.

(2) The department shall ensure all of the following:

(a) The process for funding the state office of recipient rights includes a review of the funding by the state recipient rights advisory committee.

(b) The state office of recipient rights will be protected from pressures that could interfere with the impartial, even-handed, and thorough performance of its duties.

(c) The state office of recipient rights will have unimpeded access to all of the following:

(*i*) All programs and services operated by or under contract with the department except where other recipient rights systems authorized by this act exist.

(*ii*) All staff employed by or under contract with the department.

(*iii*) All evidence necessary to conduct a thorough investigation or to fulfill its monitoring function.

(d) Staff of the state office of recipient rights receive training each year in recipient rights protection.

(e) Each contract between the department and a provider requires both of the following:

(*i*) That the provider and his or her employees receive annual training in recipient rights protection.

(*ii*) That recipients will be protected from rights violations while they are receiving services under the contract.

(f) Technical assistance and training in recipient rights protection are available to all community mental health services programs and other mental health service providers subject to this act.

(3) The department shall endeavor to ensure all of the following:

(a) The state office of recipient rights has sufficient staff and other resources necessary to perform the duties described in this section.

(b) Complainants, staff of the state office of recipient rights, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities.

(c) Appropriate remedial action is taken to resolve violations of rights and notify the complainants of substantiated violations in a manner that does not violate employee rights.

(4) After consulting with the state recipient rights advisory committee, the department director shall select a director of the state office of recipient rights who has the education, training, and experience to fulfill the responsibilities of the office. The department director shall not replace or dismiss the director of the state office of recipient rights without first consulting the state recipient rights advisory committee. The director of the state office of recipient rights shall have no direct service responsibility. The director of the state office of recipient rights shall report directly and solely to the department director. The department director shall not delegate his or her responsibility under this subsection.

(5) The state office of recipient rights may do all of the following:

(a) Investigate apparent or suspected violations of the rights guaranteed by this chapter.

(b) Resolve disputes relating to violations.

(c) Act on behalf of recipients to obtain appropriate remedies for any apparent violations.

(d) Apply for and receive grants, gifts, and bequests to effectuate any purpose of this chapter.

(6) The state office of recipient rights shall do all of the following:

(a) Ensure that recipients, parents of minor recipients, and guardians or other legal representatives have access to summaries of the rights guaranteed by this chapter and chapter 7a and are notified of those rights in an understandable manner, both at the time services are requested and periodically during the time services are provided to the recipient.

(b) Ensure that the telephone number and address of the office of recipient rights and the names of rights officers are conspicuously posted in all service sites.

(c) Maintain a record system for all reports of apparent or suspected rights violations received, including a mechanism for logging in all complaints and a mechanism for secure storage of all investigative documents and evidence.

(d) Initiate actions that are appropriate and necessary to safeguard and protect rights guaranteed by this chapter to recipients of services provided directly by the department or by its contract providers other than community mental health services programs.

(e) Receive reports of apparent or suspected violations of rights guaranteed by this chapter. The state office of recipient rights shall refer reports of apparent or suspected rights violations to the recipient rights office of the appropriate provider to be addressed by the provider's internal rights protection mechanisms. The state office shall intervene as necessary to act on behalf of recipients in situations in which the director of the department considers the rights protection system of the provider to be out of compliance with this act and rules promulgated under this act.

(f) Upon request, advise recipients of the process by which a rights complaint or appeal may be made and assist recipients in preparing written rights complaints and appeals.

(g) Advise recipients that there are advocacy organizations available to assist recipients in preparing written rights complaints and appeals and offer to refer recipients to those organizations.

(h) Upon receipt of a complaint, advise the complainant of the complaint process, appeal process, and mediation option.

(i) Ensure that each service site operated by the department or by a provider under contract with the department, other than a community mental health services program, is visited by recipient rights staff with the frequency necessary for protection of rights but in no case less than annually.

(j) Ensure that all individuals employed by the department receive department-approved training related to recipient rights protection before or within 30 days after being employed.

(k) Ensure that all reports of apparent or suspected violations of rights within state facilities or programs operated by providers under contract with the department other than community mental health services programs are investigated in accordance with section 778 and that those reports that do not warrant investigation are recorded in accordance with subdivision (c).

(*l*) Review semiannual statistical rights data submitted by community mental health services programs and

licensed hospitals to determine trends and patterns in the protection of recipient rights in the public mental health system and provide a summary of the data to community mental health services programs and to the director of the department.

(m) Serve as consultant to the director in matters related to recipient rights.

(n) At least quarterly, provide summary complaint data consistent with the annual report required in subdivision (o), together with a summary of remedial action taken on substantiated complaints, to the department and the state recipient rights advisory committee.

(o) Submit to the department director and to the committees and subcommittees of the legislature with legislative oversight of mental health matters, for availability to the public, an annual report on the current status of recipient rights for the state. The report shall be submitted not later than March 31 of each year for the preceding fiscal year. The annual report shall include, at a minimum, all of the following:

(*i*) Summary data by type or category regarding the rights of recipients receiving services from the department including the number of complaints received by each state facility and other state-operated placement agency, the number of reports filed, and the number of reports investigated.

(*ii*) The number of substantiated rights violations by category and by state facility.

(*iii*) The remedial actions taken on substantiated rights violations by category and by state facility.

(*iv*) Training received by staff of the state office of recipient rights.

(*v*) Training provided by the state office of recipient rights to staff of contract providers.

(*vi*) Outcomes of assessments of the recipient rights system of each community mental health services program.

(*vii*) Identification of patterns and trends in rights protection in the public mental health system in this state.

(*viii*) Review of budgetary issues including staffing and financial resources.

(*ix*) Summary of the results of any consumer satisfaction surveys conducted.

(*x*) Recommendations to the department.

(p) Provide education and training to its recipient rights advisory committee and its recipient rights appeals committee.

History: 1974, Act 258, Eff. Aug. 6, 1975;—Am. 1995, Act 290, Eff. Mar. 28, 1996;—Am. 2006, Act 604, Imd. Eff. Jan. 3, 2007.

Administrative rules: R 330.1001 et seq. of the Michigan Administrative Code.

330.1755 Office of recipient rights; establishment by community mental health services program and hospital.

Sec. 755. (1) Each community mental health services program and each licensed hospital shall establish an office of recipient rights subordinate only to the executive director or hospital director.

(2) Each community mental health services program and each licensed hospital shall ensure all of the following:

(a) Education and training in recipient rights policies and procedures are provided to its recipient rights advisory committee and its recipient rights appeals committee.

(b) The process for funding the office of recipient rights includes a review of the funding by the recipient rights advisory committee.

(c) The office of recipient rights will be protected from pressures that could interfere with the impartial, even-handed, and thorough performance of its duties.

(d) The office of recipient rights will have unimpeded access to all of the following:

(*i*) All programs and services operated by or under contract with the community mental health services program or licensed hospital.

(*ii*) All staff employed by or under contract with the community mental health services program or licensed hospital.

(*iii*) All evidence necessary to conduct a thorough investigation or to fulfill its monitoring function.

(e) Staff of the office of recipient rights receive training each year in recipient rights protection.

(f) Each contract between the community mental health services program or licensed hospital and a provider requires both of the following:

(*i*) That the provider and his or her employees receive recipient rights training.

(*ii*) That recipients will be protected from rights violations while they are receiving services under the contract.

(3) Each community mental health services program and each licensed hospital shall endeavor to ensure all of the following:

(a) Complainants, staff of the office of recipient rights, and any staff acting on behalf of a recipient will be protected from harassment or retaliation resulting from recipient rights activities and that appropriate

disciplinary action will be taken if there is evidence of harassment or retaliation.

(b) Appropriate remedial action is taken to resolve violations of rights and notify the complainants of substantiated violations in a manner that does not violate employee rights.

(4) The executive director or hospital director shall select a director of the office of recipient rights who has the education, training, and experience to fulfill the responsibilities of the office. The executive director shall not select, replace, or dismiss the director of the office of recipient rights without first consulting the recipient rights advisory committee. The director of the office of recipient rights shall have no direct clinical service responsibility.

(5) Each office of recipient rights established under this section shall do all of the following:

(a) Provide or coordinate the protection of recipient rights for all directly operated or contracted services.

(b) Ensure that recipients, parents of minor recipients, and guardians or other legal representatives have access to summaries of the rights guaranteed by this chapter and chapter 7a and are notified of those rights in an understandable manner, both at the time services are initiated and periodically during the time services are provided to the recipient.

(c) Ensure that the telephone number and address of the office of recipient rights and the names of rights officers are conspicuously posted in all service sites.

(d) Maintain a record system for all reports of apparent or suspected rights violations received within the community mental health services program system or the licensed hospital system, including a mechanism for logging in all complaints and a mechanism for secure storage of all investigative documents and evidence.

(e) Ensure that each service site is visited with the frequency necessary for protection of rights but in no case less than annually.

(f) Ensure that all individuals employed by the community mental health services program, contract agency, or licensed hospital receive training related to recipient rights protection before or within 30 days after being employed.

(g) Review the recipient rights policies and the rights system of each provider of mental health services under contract with the community mental health services program or licensed hospital to ensure that the rights protection system of each provider is in compliance with this act and is of a uniformly high standard.

(h) Serve as consultant to the executive director or hospital director and to staff of the community mental health services program or licensed hospital in matters related to recipient rights.

(i) Ensure that all reports of apparent or suspected violations of rights within the community mental health services program system or licensed hospital system are investigated in accordance with section 778 and that those reports that do not warrant investigation are recorded in accordance with subdivision (d).

(j) Semiannually provide summary complaint data consistent with the annual report required in subsection (6), together with a summary of remedial action taken on substantiated complaints by category, to the department and to the recipient rights advisory committee of the community mental health services program or licensed hospital.

(6) The executive director or hospital director shall submit to the board of the community mental health services program or the governing board of the licensed hospital and the department an annual report prepared by the office of recipient rights on the current status of recipient rights in the community mental health services program system or licensed hospital system and a review of the operations of the office of recipient rights. The report shall be submitted not later than December 30 of each year for the preceding fiscal year or period specified in contract. The annual report shall include, at a minimum, all of the following:

(a) Summary data by category regarding the rights of recipients receiving services from the community mental health services program or licensed hospital including complaints received, the number of reports filed, and the number of reports investigated by provider.

(b) The number of substantiated rights violations by category and provider.

(c) The remedial actions taken on substantiated rights violations by category and provider.

(d) Training received by staff of the office of recipient rights.

(e) Training provided by the office of recipient rights to contract providers.

(f) Desired outcomes established for the office of recipient rights and progress toward these outcomes.

(g) Recommendations to the community mental health services program board or licensed hospital governing board.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1756 State recipient rights advisory committee; appointment by director.

Sec. 756. (1) The director shall appoint a 12-member state recipient rights advisory committee. The membership of the committee shall be broadly based so as to best represent the varied perspectives of department staff, government officials, attorneys, community mental health services program staff, private

providers, recipients, and recipient interest groups. At least 1/3 of the membership of the state recipient rights advisory committee shall be primary consumers or family members, and of that 1/3, at least 2 shall be primary consumers. In appointing members to the advisory committee, the director shall consider the recommendations of the director of the state office of recipient rights and individuals who are members of the recipient rights advisory committee.

(2) The state recipient rights advisory committee shall do all of the following:

(a) Meet at least quarterly, or more frequently as necessary, to carry out its responsibilities.

(b) Maintain a current list of members' names to be made available to individuals upon request.

(c) Maintain a current list of categories represented, to be made available to individuals upon request.

(d) Protect the state office of recipient rights from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions.

(e) Recommend to the director of the department candidates for the position of director of the state office of recipient rights and consult with the director regarding any proposed dismissal of the director of the state office of recipient rights.

(f) Serve in an advisory capacity to the director of the department and the director of the state office of recipient rights.

(g) Review and provide comments on the report submitted by the state office of recipient rights to the department under section 754.

(3) Meetings of the state recipient rights advisory committee are subject to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Minutes shall be maintained and made available to individuals upon request.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1757 Recipient rights advisory committee; appointment by community mental health services program board.

Sec. 757. (1) The board of each community mental health services program shall appoint a recipient rights advisory committee consisting of at least 6 members. The membership of the committee shall be broadly based so as to best represent the varied perspectives of the community mental health services program's geographic area. At least 1/3 of the membership shall be primary consumers or family members, and of that 1/3, at least 1/2 shall be primary consumers.

(2) The recipient rights advisory committee shall do all of the following:

(a) Meet at least semiannually or as necessary to carry out its responsibilities.

(b) Maintain a current list of members' names to be made available to individuals upon request.

(c) Maintain a current list of categories represented to be made available to individuals upon request.

(d) Protect the office of recipient rights from pressures that could interfere with the impartial, even-handed, and thorough performance of its functions.

(e) Recommend candidates for director of the office of recipient rights to the executive director, and consult with the executive director regarding any proposed dismissal of the director of the office of recipient rights.

(f) Serve in an advisory capacity to the executive director and the director of the office of recipient rights.

(g) Review and provide comments on the report submitted by the executive director to the community mental health services program board under section 755.

(h) If designated by the board of the community mental health services program, serve as the appeals committee for a recipient's appeal under section 784.

(i) Meetings of the recipient rights advisory committee are subject to the open meetings act, Act No. 267 of the Public Acts of 1976, being sections 15.261 to 15.275 of the Michigan Compiled Laws. Minutes shall be maintained and made available to individuals upon request.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1758 Recipient rights advisory committee; appointment by licensed hospital.

Sec. 758. Unless otherwise provided by contract with the local community mental health services program, each licensed hospital shall appoint a recipient rights advisory committee. At least 1/3 of the membership shall be primary consumers or family members and, of that 1/3, at least 1/2 shall be primary consumers. The recipient rights advisory committee shall do all of the following:

(a) Meet at least semiannually or as necessary to carry out its responsibilities.

(b) Maintain a current list of members' names and a separate list of categories represented, to be made available to individuals upon request.

(c) Protect the office of recipient rights from pressures that could interfere with the impartial, even-handed,

and thorough performance of its functions.

(d) Review and provide comments on the report submitted by the hospital director to the governing board of the licensed hospital under section 755.

(e) Serve in an advisory capacity to the hospital director and the director of the office of recipient rights.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

MENTAL HEALTH CODE (EXCERPT)
Act 258 of 1974

CHAPTER 7A
DISPUTE RESOLUTION

330.1772 Definitions.

Sec. 772. As used in this chapter:

(a) "Allegation" means an assertion of fact made by an individual that has not yet been proved or supported with evidence.

(b) "Appeals committee" means a committee appointed by the director or by the board of a community mental health services program or licensed hospital under section 774.

(c) "Appellant" means the recipient, complainant, parent, or guardian who appeals a recipient rights finding or a respondent's action to an appeals committee.

(d) "Complainant" means an individual who files a rights complaint.

(e) "Investigation" means a detailed inquiry into and systematic examination of an allegation raised in a rights complaint.

(f) "Mediation" means a private, informal dispute resolution process in which an impartial, neutral individual, in a confidential setting, assists parties in reaching their own settlement of issues in a dispute and has no authoritative decision-making power.

(g) "Office" means all of the following:

(*i*) With respect to a rights complaint involving services provided directly by or under contract with the department, unless the provider is a community mental health services program, the state office of recipient rights created under section 754.

(*ii*) With respect to a rights complaint involving services provided directly by or under contract with a community mental health services program, the office of recipient rights created by a community mental health services program under section 755.

(*iii*) With respect to a rights complaint involving services provided by a licensed hospital, the office of recipient rights created by a licensed hospital under section 755.

(h) "Rights complaint" means a written or oral statement that meets the requirements of section 776.

(i) "Respondent" means the service provider that had responsibility at the time of an alleged rights violation for the services with respect to which a rights complaint has been filed.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1774 Appeals committee.

Sec. 774. (1) The director shall appoint an appeals committee consisting of 7 individuals, none of whom shall be employed by the department or a community mental health services program, to hear appeals of recipient rights matters. The committee shall include at least 3 members of the state recipient rights advisory committee and 2 primary consumers.

(2) The board of a community mental health services program shall do 1 of the following:

(a) Appoint an appeals committee consisting of 7 individuals, none of whom shall be employed by the department or a community mental health services program, to hear appeals of recipients' rights matters. The appeals committee shall include at least 3 members of the recipient rights advisory committee, 2 board members, and 2 primary consumers. A member of the appeals committee may represent more than 1 of these categories.

(b) Designate the recipient rights advisory committee as the appeals committee.

(3) The governing body of a licensed hospital shall designate the appeals committee of the local community mental health services program to hear an appeal of a decision on a recipient rights matter brought by or on behalf of a recipient of that community mental health services program.

(4) The governing body of a licensed hospital shall do 1 of the following with respect to an appeal of a decision on a recipient rights matter brought by or on behalf of an individual who is not a recipient of a community mental health services program:

(a) Appoint an appeals committee consisting of 7 members, none of whom shall be employed by the department or a community mental health services program, 2 of whom shall be primary consumers and 2 of whom shall be community members.

(b) By agreement with the department, designate the appeals committee appointed by the department to hear appeals of rights complaints brought against the licensed hospital.

(5) An appeals committee appointed under this section may request consultation and technical assistance

from the department.

(6) A member of an appeals committee who has a personal or professional relationship with an individual involved in an appeal shall abstain from participating in that appeal as a member of the committee.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1776 Rights complaint; filing; contents; recording; acknowledgment; notice; assistance; conduct of investigation.

Sec. 776. (1) A recipient, or another individual on behalf of a recipient, may file a rights complaint with the office alleging a violation of this act or rules promulgated under this act.

(2) A rights complaint shall contain all of the following information:

(a) A statement of the allegations that give rise to the dispute.

(b) A statement of the right or rights that may have been violated.

(c) The outcome that the complainant is seeking as a resolution to the complaint.

(3) Each rights complaint shall be recorded upon receipt by the office, and acknowledgment of the recording shall be sent along with a copy of the complaint to the complainant within 5 business days.

(4) Within 5 business days after the office receives a complaint, it shall notify the complainant if it determines that no investigation of the rights complaint is warranted.

(5) The office shall assist the recipient or other individual with the complaint process. The office shall advise the recipient or other individual that there are advocacy organizations available to assist in preparation of a written rights complaint and shall offer to refer the recipient or other individual to those organizations. In the absence of assistance from an advocacy organization, the office shall assist in preparing a written rights complaint. The office shall inform the recipient or other individual of the option of mediation under section 786.

(6) If a rights complaint has been filed regarding the conduct of the executive director, the rights investigation shall be conducted by the office of another community mental health services program or by the state office of recipient rights as decided by the board.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1778 Investigation; initiation; recording; standard of proof; written status report; written investigative report; new evidence.

Sec. 778. (1) The office shall initiate investigation of apparent or suspected rights violations in a timely and efficient manner. Subject to delays involving pending action by external agencies as described in subsection (5), the office shall complete the investigation not later than 90 days after it receives the rights complaint. Investigation shall be initiated immediately in cases involving alleged abuse, neglect, serious injury, or death of a recipient involving an apparent or suspected rights violation.

(2) Investigation activities for each rights complaint shall be accurately recorded by the office.

(3) The office shall determine whether a right was violated by using the preponderance of the evidence as its standard of proof.

(4) The office shall issue a written status report every 30 calendar days during the course of the investigation. The report shall be submitted to the complainant, the respondent, and the responsible mental health agency. A status report shall include all of the following:

(a) Statement of the allegations.

(b) Statement of the issues involved.

(c) Citations to relevant provisions of this act, rules, policies, and guidelines.

(d) Investigative progress to date.

(e) Expected date for completion of the investigation.

(5) Upon completion of the investigation, the office shall submit a written investigative report to the respondent and to the responsible mental health agency. Issuance of the written investigative report may be delayed pending completion of investigations that involve external agencies, including law enforcement agencies and the department of social services. The report shall include all of the following:

(a) Statement of the allegations.

(b) Statement of the issues involved.

(c) Citations to relevant provisions of this act, rules, policies, and guidelines.

(d) Investigative findings.

(e) Conclusions.

(f) Recommendations, if any.

(6) A rights investigation may be reopened or reinvestigated by the office if there is new evidence that was not presented at the time of the investigation.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1780 Remedial action.

Sec. 780. (1) If it has been determined through investigation that a right has been violated, the respondent shall take appropriate remedial action that meets all of the following requirements:

(a) Corrects or provides a remedy for the rights violations.

(b) Is implemented in a timely manner.

(c) Attempts to prevent a recurrence of the rights violation.

(2) The action shall be documented and made part of the record maintained by the office.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1782 Summary report.

Sec. 782. (1) The executive director, hospital director, or director of a state facility shall submit a written summary report to the complainant and recipient, if different than the complainant, within 10 business days after the executive director, hospital director, or director of the state facility receives a copy of the investigative report under section 778(5). The summary report shall include all of the following:

(a) Statement of the allegations.

(b) Statement of issues involved.

(c) Citations to relevant provisions of this act, rules, policies, and guidelines.

(d) Summary of investigative findings.

(e) Conclusions.

(f) Recommendations made by the office.

(g) Action taken, or plan of action proposed, by the respondent.

(h) A statement describing the complainant's right to appeal and the grounds for an appeal.

(2) Information in the summary report shall be provided within the constraints of sections 748 and 750 and shall not violate the rights of any employee.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1784 Summary report; appeal.

Sec. 784. (1) Not later than 45 days after receipt of the summary report under section 782, the complainant may file a written appeal with the appeals committee with jurisdiction over the office of recipient rights that issued the summary report.

(2) An appeal under subsection (1) shall be based on 1 of the following grounds:

(a) The investigative findings of the office are not consistent with the facts or with law, rules, policies, or guidelines.

(b) The action taken or plan of action proposed by the respondent does not provide an adequate remedy.

(c) An investigation was not initiated or completed on a timely basis.

(3) The office shall advise the complainant that there are advocacy organizations available to assist the complainant in preparing the written appeal and shall offer to refer the complainant to those organizations. In the absence of assistance from an advocacy organization, the office shall assist the complainant in meeting the procedural requirements of a written appeal. The office shall also inform the complainant of the option of mediation under section 786.

(4) Within 5 business days after receipt of the written appeal, members of the appeals committee shall review the appeal to determine whether it meets the criteria set forth in subsection (2). If the appeal is denied because the criteria in subsection (2) were not met, the complainant shall be notified in writing. If the appeal is accepted, written notice shall be provided to the complainant and a copy of the appeal shall be provided to the respondent and the responsible mental health agency.

(5) Within 30 days after receipt of a written appeal, the appeals committee shall meet and review the facts as stated in all complaint investigation documents and shall do 1 of the following:

(a) Uphold the investigative findings of the office and the action taken or plan of action proposed by the respondent.

(b) Return the investigation to the office and request that it be reopened or reinvestigated.

(c) Uphold the investigative findings of the office but recommend that the respondent take additional or different action to remedy the violation.

(d) If the responsible mental health agency is a community mental health services program or a licensed hospital, recommend that the board of the community mental health services program or the governing board of the licensed hospital request an external investigation by the state office of recipient rights.

(6) The appeals committee shall document its decision in writing. Within 10 working days after reaching

its decision, it shall provide copies of the decision to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if a guardian has been appointed, the responsible mental health agency, and the office.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1786 Notice of decision; appeal.

Sec. 786. (1) Within 45 days after receiving written notice of the decision of an appeals committee under section 784(5), the appellant may file a written appeal with the department. The appeal shall be based on the record established in the previous appeal, and on the allegation that the investigative findings of the local office of recipient rights are not consistent with the facts or with law, rules, policies, or guidelines.

(2) Upon receipt of an appeal under subsection (1), the department shall give written notice of receipt of the appeal to the appellant, respondent, local office of recipient rights holding the record of the complaint, and the responsible mental health agency. The respondent, local office of recipient rights holding the record of the complaint, and the responsible mental health agency shall ensure that the department has access to all necessary documentation and other evidence cited in the complaint.

(3) The department shall review the record based on the allegation described in subsection (1). The department shall not consider additional evidence or information that was not available during the appeal under section 784, although the department may return the matter to the board or the governing body of the licensed hospital requesting an additional investigation.

(4) Within 30 days after receiving the appeal, the department shall review the appeal and do 1 of the following:

(a) Affirm the decision of the appeals committee.

(b) Return the matter to the board or the governing body of the licensed hospital with instruction for additional investigation and consideration.

(5) The department shall provide copies of its action to the respondent, appellant, recipient if different than the appellant, the recipient's guardian if a guardian has been appointed, the board of the community mental health services program or the governing body of the licensed hospital, and the local office of recipient rights holding the record.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.

330.1788 Mediation.

Sec. 788. (1) At any time after the office completes the investigative report, the parties may agree to mediate the dispute. A mediator shall be jointly selected to facilitate a mutually acceptable settlement between the parties. The mediator shall be an individual who has received training in mediation and who is not involved in any manner with the dispute or with the provision of services to the recipient.

(2) If the parties agree to mediation and reach agreement through the mediation process, the mediator shall prepare a report summarizing the agreement, which shall be signed by the parties. The signed agreement shall be binding on both parties. Notice that an agreement has been reached shall be sent to the office.

(3) If the parties fail to reach agreement through the mediation process, the mediator shall document that fact in writing and provide a copy of the documentation to both parties and the office within 10 days after the end of the mediation process.

(4) If the parties engage in mediation, all appeal and response times required under this chapter are suspended during the period of time the mediation process is taking place. The suspension of time periods begins on the day the parties agree to mediate and expires 5 days after the day the mediator provides the written documentation to the parties and the office that mediation was not successful.

History: Add. 1995, Act 290, Eff. Mar. 28, 1996.