

SENATE BILL No. 872

September 24, 2009, Introduced by Senators THOMAS, BRATER, JACOBS, CLARK-COLEMAN, SCOTT, CHERRY, OLSHOVE, ANDERSON, BASHAM and SWITALSKI and referred to the Committee on Health Policy.

A bill to amend 1974 PA 258, entitled
"Mental health code,"
(MCL 330.1001 to 330.2106) by adding section 709.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 709. (1) THE DEPARTMENT SHALL ESTABLISH A POLICY
2 DIRECTIVE ON LOCAL GRIEVANCE PROCEDURES THAT ALL COMMUNITY MENTAL
3 HEALTH SERVICES PROGRAMS SHALL BE REQUIRED TO FOLLOW.

4 (2) THE DEPARTMENT'S POLICY DIRECTIVE SHALL REQUIRE A
5 COMMUNITY MENTAL HEALTH SERVICES PROGRAM TO REACH A DECISION ON A
6 LOCAL GRIEVANCE WITHIN 35 CALENDAR DAYS FROM THE DATE A GRIEVANCE
7 IS FILED BY AN APPLICANT, A RECIPIENT, A GUARDIAN OF AN APPLICANT
8 OR RECIPIENT, OR AN AUTHORIZED REPRESENTATIVE OF THE APPLICANT,
9 RECIPIENT, OR GUARDIAN.

10 (3) IF A MENTAL HEALTH PROFESSIONAL COMMUNICATES ORALLY OR IN

1 WRITING TO A COMMUNITY MENTAL HEALTH SERVICES PROGRAM THAT THE
2 APPLICANT OR RECIPIENT IS EXPERIENCING AN EMERGENCY SITUATION, THE
3 COMMUNITY MENTAL HEALTH SERVICES PROGRAM IS REQUIRED TO REACH A
4 DECISION WITHIN 72 HOURS OF RECEIVING THAT COMMUNICATION.

5 (4) IF THE FILING APPLICANT, RECIPIENT, GUARDIAN, OR
6 AUTHORIZED REPRESENTATIVE IS DISSATISFIED WITH THE DECISION OF THE
7 COMMUNITY MENTAL HEALTH SERVICES PROGRAM UNDER THE LOCAL GRIEVANCE
8 PROCESS, HE OR SHE MAY REQUEST WITHIN 60 CALENDAR DAYS OF THAT
9 DECISION, OR WITHIN 10 CALENDAR DAYS IF THE GRIEVANCE REPRESENTED
10 AN EMERGENCY SITUATION, THAT THE DEPARTMENT ARRANGE FOR AN EXTERNAL
11 REVIEW OF THE GRIEVANCE IF BOTH OF THE FOLLOWING APPLY:

12 (A) THE GRIEVANCE INVOLVES A COMMUNITY MENTAL HEALTH SERVICES
13 PROGRAM DETERMINATION THAT AN ADMISSION, AVAILABILITY OF CARE,
14 CONTINUED STAY, OR OTHER SPECIALTY MENTAL HEALTH SERVICE OR SUPPORT
15 IS DENIED, REDUCED, SUSPENDED, OR TERMINATED DUE TO LACK OF MEDICAL
16 NECESSITY.

17 (B) THE APPLICANT OR RECIPIENT DOES NOT HAVE LEGAL RECOURSE TO
18 PARTICIPATE IN THE MEDICAID FAIR HEARING PROCESS REGARDING THE
19 DETERMINATION OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

20 (5) UPON RECEIPT OF A REQUEST FOR AN EXTERNAL REVIEW, THE
21 DEPARTMENT SHALL PROVIDE WRITTEN NOTIFICATION OF RECEIPT TO THE
22 INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

23 (6) NOT LATER THAN 5 BUSINESS DAYS AFTER RECEIVING A REQUEST
24 FOR AN EXTERNAL REVIEW, OR NOT LATER THAN 24 HOURS IF THE GRIEVANCE
25 REPRESENTED AN EMERGENCY SITUATION, THE DEPARTMENT SHALL DETERMINE
26 WHETHER EXTERNAL REVIEW IS WARRANTED. THE PERSON FILING THE
27 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM

1 SHALL RECEIVE WRITTEN NOTIFICATION OF THE DETERMINATION ACCORDING
2 TO 1 OF THE FOLLOWING:

3 (A) IF EXTERNAL REVIEW IS NOT WARRANTED, THE DEPARTMENT SHALL
4 ATTEMPT TO MEDIATE THE DISAGREEMENT BETWEEN THE PERSON FILING THE
5 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
6 PROGRAM.

7 (B) IF EXTERNAL REVIEW IS WARRANTED AND THE SERVICE IN
8 QUESTION IS SOLELY OR PRIMARILY OF A TREATMENT NATURE, THE
9 DEPARTMENT SHALL ARRANGE FOR THE REVIEW TO BE CONDUCTED BY A
10 PSYCHIATRIST WHO HAS NO EMPLOYMENT, CONTRACTUAL, OR OTHER
11 RELATIONSHIP WITH THE DEPARTMENT OR ANY COMMUNITY MENTAL HEALTH
12 SERVICES PROGRAM.

13 (C) IF EXTERNAL REVIEW IS WARRANTED AND THE SERVICE IN
14 QUESTION IS SOLELY OR PRIMARILY OF A SUPPORT NATURE, THE DEPARTMENT
15 SHALL ARRANGE FOR THE EXTERNAL REVIEW TO BE CONDUCTED BY A MENTAL
16 HEALTH PROFESSIONAL WHO HAS EXPERIENCE WITH THE SERVICE IN
17 QUESTION, AND WHO HAS NO EMPLOYMENT, CONTRACTUAL, OR OTHER
18 RELATIONSHIP WITH THE DEPARTMENT OR ANY COMMUNITY MENTAL HEALTH
19 SERVICES PROGRAM.

20 (7) IN ARRANGING FOR AN EXTERNAL REVIEW, THE DEPARTMENT SHALL
21 FORWARD IMMEDIATELY TO THE EXTERNAL REVIEWER WRITTEN MATERIAL
22 SUBMITTED TO THE DEPARTMENT BY THE PERSON FILING THE GRIEVANCE. THE
23 EXTERNAL REVIEWER MAY REQUEST THAT THE PERSON FILING THE GRIEVANCE
24 PROVIDE ADDITIONAL INFORMATION WITHIN 7 BUSINESS DAYS OR WITHIN 1
25 BUSINESS DAY IF THE GRIEVANCE REPRESENTED AN EMERGENCY SITUATION.

26 (8) UPON RECEIVING NOTIFICATION THAT AN EXTERNAL REVIEW IS TO
27 BE CONDUCTED, THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES PROGRAM

1 HAS 7 BUSINESS DAYS TO PROVIDE THE EXTERNAL REVIEWER WITH ALL
2 DOCUMENTS AND INFORMATION UTILIZED BY THE COMMUNITY MENTAL HEALTH
3 SERVICES PROGRAM IN MAKING ITS LOCAL GRIEVANCE DECISION. IF THE
4 GRIEVANCE REPRESENTED AN EMERGENCY SITUATION, THE MATERIAL SHALL BE
5 PROVIDED WITHIN 1 BUSINESS DAY. INITIAL NOTIFICATION OF THE 1-DAY
6 REQUIREMENT MAY BE VERBAL. FAILURE OF A COMMUNITY MENTAL HEALTH
7 SERVICES PROGRAM TO PROVIDE THE REQUIRED MATERIAL WITHIN THE
8 PRESCRIBED TIME FRAME SHALL RESULT IN THE DEPARTMENT ORDERING AN
9 IMMEDIATE REVERSAL OF THE LOCAL GRIEVANCE DECISION.

10 (9) AN EXTERNAL REVIEWER SHALL MAKE A RECOMMENDATION TO THE
11 DEPARTMENT WITHIN 10 BUSINESS DAYS AFTER RECEIPT OF INFORMATION
12 UNDER SUBSECTIONS (7) AND (8) OR WITHIN 48 HOURS FROM THE RECEIPT
13 OF THAT INFORMATION IF THE GRIEVANCE REPRESENTED AN EMERGENCY
14 SITUATION.

15 (10) UPON RECEIPT OF A RECOMMENDATION FROM AN EXTERNAL
16 REVIEWER, THE DEPARTMENT SHALL MAKE A BINDING ADMINISTRATIVE
17 DECISION ABOUT THE CASE WITHIN 7 BUSINESS DAYS OR WITHIN 24 HOURS
18 IF THE GRIEVANCE REPRESENTED AN EMERGENCY SITUATION. INITIAL NOTICE
19 OF THE DECISION MAY BE PROVIDED ORALLY TO THE PERSON FILING THE
20 GRIEVANCE AND THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
21 PROGRAM. IN ALL CASES, BOTH PARTIES SHALL BE PROVIDED WRITTEN
22 NOTIFICATION THAT SHALL MINIMALLY INCLUDE BOTH OF THE FOLLOWING:

23 (A) THE RECOMMENDATION MADE BY THE EXTERNAL REVIEWER AND THE
24 RATIONALE FOR THAT RECOMMENDATION.

25 (B) IF APPLICABLE, THE RATIONALE FOR WHY THE DEPARTMENT DID
26 NOT FOLLOW THE EXTERNAL REVIEWER'S RECOMMENDATION.

27 (11) AT ANY TIME BEFORE THE BINDING ADMINISTRATIVE DECISION

1 FROM THE DEPARTMENT, THE EXTERNAL REVIEW PROCESS IS ABROGATED IF
2 THE PERSON FILING THE GRIEVANCE MAKES A WRITTEN REQUEST FOR
3 WITHDRAWAL OR IF THE INVOLVED COMMUNITY MENTAL HEALTH SERVICES
4 PROGRAM PROVIDES WRITTEN NOTIFICATION THAT IT HAS ELECTED TO
5 AUTHORIZE THE ACTION SOUGHT BY THE PERSON FILING THE GRIEVANCE.

6 (12) IN MAKING A DETERMINATION UNDER SUBSECTION (6) OR (10),
7 THE DEPARTMENT MAY CONSIDER ALL INFORMATION IT CONSIDERS RELEVANT,
8 INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

9 (A) THE APPLICANT'S OR RECIPIENT'S DIAGNOSIS, PROGNOSIS, AND
10 CASE HISTORY.

11 (B) THE SEVERITY OF THE APPLICANT'S OR RECIPIENT'S CONDITION
12 AND THE DEGREE TO WHICH THE APPLICANT'S OR RECIPIENT'S
13 CIRCUMSTANCES MEET THE CRITERIA DESCRIBED IN SECTION 208 FOR
14 PRIORITY SERVICES.

15 (C) THE FINANCIAL RESOURCES AVAILABLE TO THE INVOLVED
16 COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

17 (D) THE DEGREE TO WHICH THE COMMUNITY MENTAL HEALTH SERVICES
18 PROGRAM UTILIZED APPROPRIATE PERSON-CENTERED PLANNING PROCEDURES.

19 (E) THE QUALITY OF THE WRITTEN INDIVIDUALIZED PLAN OF SERVICE
20 AND THE DEGREE OF CONSUMER PARTICIPATION IN DEVELOPING IT.

21 (F) THE AVAILABILITY OF THE SERVICE DESIRED BY THE PERSON
22 FILING THE GRIEVANCE.

23 (G) THE EXISTENCE OF CO-OCCURRING MEDICAL CONDITIONS.

24 (H) THE DEGREE OF INVOLVEMENT REQUIRED FROM ANY PROVIDER WHO
25 IS NOT A MENTAL HEALTH HUMAN SERVICE PROVIDER IN ADDRESSING THE
26 SITUATION.

27 (13) THE DEPARTMENT SHALL PROVIDE THE LEGISLATURE ANNUALLY

1 WITH A REPORT FOR EACH COMMUNITY MENTAL HEALTH SERVICES PROGRAM AND
2 THE STATE IN AGGREGATE THAT INCLUDES THE FOLLOWING DETAILS:

3 (A) THE NUMBER OF LOCAL GRIEVANCES FILED, CATEGORIZED
4 ACCORDING TO EMERGENT OR NONEMERGENT STATUS AND WHETHER OR NOT THE
5 PERSON FILING THE GRIEVANCE HAD LEGAL RECOURSE TO THE MEDICAID FAIR
6 HEARING PROCESS.

7 (B) THE NUMBER OF FILED LOCAL GRIEVANCES, CATEGORIZED
8 ACCORDING TO SUBDIVISION (A), IN WHICH AGREEMENT BETWEEN THE
9 PARTIES NEGATED A NEED FOR A LOCAL GRIEVANCE DECISION BY THE
10 COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

11 (C) THE NUMBER OF LOCAL GRIEVANCE DECISIONS, CATEGORIZED
12 ACCORDING TO SUBDIVISION (A), UPHOLDING THE INITIAL DETERMINATION
13 OF THE COMMUNITY MENTAL HEALTH SERVICES PROGRAM.

14 (D) THE NUMBER OF LOCAL GRIEVANCE DECISIONS, CATEGORIZED
15 ACCORDING TO EMERGENT OR NONEMERGENT STATUS, RESULTING IN REQUESTS
16 FOR EXTERNAL REVIEW.

17 (E) THE NUMBER OF REQUESTS FOR EXTERNAL REVIEW, CATEGORIZED
18 ACCORDING TO SUBDIVISION (D), THAT WERE NOT HONORED BY THE
19 DEPARTMENT, AND THE OUTCOMES OF THE DEPARTMENT'S MEDIATION EFFORTS
20 FOR THOSE CASES.

21 (F) THE NUMBER OF REQUESTS FOR EXTERNAL REVIEW, CATEGORIZED
22 ACCORDING TO SUBDIVISION (D), HONORED BY THE DEPARTMENT.

23 (G) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
24 TO SUBDIVISION (D), IN WHICH THE COMMUNITY MENTAL HEALTH SERVICES
25 PROGRAM'S FAILURE TO PROVIDE REQUIRED MATERIAL WITHIN PRESCRIBED
26 TIME FRAMES RESULTED IN DEFAULT JUDGMENT FOR THE PERSON FILING THE
27 GRIEVANCE.

1 (H) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
2 TO SUBDIVISION (D), WITHDRAWN BEFORE FINAL ADMINISTRATIVE DECISION
3 AT THE REQUEST OF COMMUNITY MENTAL HEALTH SERVICES PROGRAMS.

4 (I) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
5 TO SUBDIVISION (D), WITHDRAWN BEFORE FINAL ADMINISTRATIVE DECISION
6 AT THE REQUEST OF A PERSON FILING A GRIEVANCE.

7 (J) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
8 TO SUBDIVISION (D), IN WHICH THE EXTERNAL REVIEW RECOMMENDATION
9 RESPECTIVELY FAVORED COMMUNITY MENTAL HEALTH SERVICES PROGRAMS AND
10 PARTIES FILING GRIEVANCES.

11 (K) THE NUMBER OF EXTERNAL REVIEW CASES, CATEGORIZED ACCORDING
12 TO SUBDIVISION (D), IN WHICH THE DEPARTMENT OVERTURNED THE EXTERNAL
13 REVIEWER RECOMMENDATION, AND THE NUMBERS OF THOSE OVERTURNED
14 EXTERNAL REVIEWER RECOMMENDATIONS THAT RESPECTIVELY FAVORED
15 COMMUNITY MENTAL HEALTH SERVICES PROGRAMS AND PARTIES FILING
16 GRIEVANCES.

17 (14) AS USED IN THIS SECTION:

18 (A) "GRIEVANCE" MEANS A WRITTEN COMMUNICATION FROM OR ON
19 BEHALF OF THE APPLICANT OR RECIPIENT, REFLECTING DISAGREEMENT WITH
20 A COMMUNITY MENTAL HEALTH SERVICES PROGRAM OR ITS PROVIDER NETWORK
21 OVER 1 OR MORE OF THE FOLLOWING:

22 (i) THE DENIAL, REDUCTION, SUSPENSION, OR TERMINATION OF
23 SERVICES.

24 (ii) THE TIMELINESS OF RESPONSES TO REQUESTS FOR SERVICES.

25 (iii) THE CLINICAL, CULTURAL, OR LINGUISTIC APPROPRIATENESS OF
26 SERVICES OFFERED OR RENDERED.

27 (iv) THE AVAILABILITY OF SERVICES OFFERED OR RENDERED.

1 (v) THE PERFORMANCE AND BEHAVIOR OF INDIVIDUAL SERVICE
2 PROVIDERS AND EMPLOYEES.

3 (B) "MEDICAL NECESSITY" MEANS SCREENING, ASSESSMENT, TREATMENT
4 OR SUPPORT THAT IS CONSISTENT WITH GENERALLY ACCEPTED MENTAL HEALTH
5 AND HEALTH CARE PRACTICES, ADDRESSES SYMPTOMS OR THE EXISTENCE OF
6 SERIOUS MENTAL ILLNESS, SERIOUS EMOTIONAL DISTURBANCE,
7 DEVELOPMENTAL DISABILITY, OR SUBSTANCE USE DISORDER, AS WELL AS
8 IMPAIRMENTS IN DAILY FUNCTIONING RELATED TO THESE DISORDERS, AND IS
9 FOR THE PURPOSE OF PREVENTING EITHER THE NEED FOR MORE INTENSIVE
10 LEVELS OF TREATMENT OR RELAPSES AND DETERIORATION OF AN
11 INDIVIDUAL'S MENTAL, EMOTIONAL, DEVELOPMENTAL, OR BEHAVIORAL
12 CONDITION.