

AN ACT concerning civil law.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 5. The Mental Health and Developmental Disabilities Confidentiality Act is amended by changing Sections 2 and 11 as follows:

(740 ILCS 110/2) (from Ch. 91 1/2, par. 802)

Sec. 2. The terms used in this Act, unless the context requires otherwise, have the meanings ascribed to them in this Section.

"Agent" means a person who has been legally appointed as an individual's agent under a power of attorney for health care or for property.

"Business associate" has the meaning ascribed to it under HIPAA, as specified in 45 CFR 160.103.

"Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR

164.514.

"Covered entity" has the meaning ascribed to it under HIPAA, as specified in 45 CFR 160.103.

"Guardian" means a legally appointed guardian or conservator of the person.

"Health information exchange" or "HIE" means a health information exchange or health information organization that oversees and governs the electronic exchange of health information.

"HIE purposes" means those uses and disclosures (as those terms are defined under HIPAA, as specified in 45 CFR 160.103) for activities of an HIE which are permitted under federal law.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and any subsequent amendments thereto and any regulations promulgated thereunder, including the Security Rule, as specified in 45 CFR 164.302-18, and the Privacy Rule, as specified in 45 CFR 164.500-34.

"Integrated health system" means an organization with a system of care which incorporates physical and behavioral healthcare and includes care delivered in an inpatient and outpatient setting.

"Interdisciplinary team" means a group of persons representing different clinical disciplines, such as medicine, nursing, social work, and psychology, providing and

coordinating the care and treatment for a recipient of mental health or developmental disability services. The group may be composed of individuals employed by one provider or multiple providers.

"Mental health or developmental disabilities services" or "services" includes but is not limited to examination, diagnosis, evaluation, treatment, training, pharmaceuticals, aftercare, habilitation or rehabilitation.

"Personal notes" means:

(i) information disclosed to the therapist in confidence by other persons on condition that such information would never be disclosed to the recipient or other persons;

(ii) information disclosed to the therapist by the recipient which would be injurious to the recipient's relationships to other persons, and

(iii) the therapist's speculations, impressions, hunches, and reminders.

"Parent" means a parent or, in the absence of a parent or guardian, a person in loco parentis.

"Recipient" means a person who is receiving or has received mental health or developmental disabilities services.

"Record" means any record kept by a therapist or by an agency in the course of providing mental health or developmental disabilities service to a recipient concerning the recipient and the services provided. "Records" includes

all records maintained by a court that have been created in connection with, in preparation for, or as a result of the filing of any petition or certificate under Chapter II, Chapter III, or Chapter IV of the Mental Health and Developmental Disabilities Code and includes the petitions, certificates, dispositional reports, treatment plans, and reports of diagnostic evaluations and of hearings under Article VIII of Chapter III or under Article V of Chapter IV of that Code. Record does not include the therapist's personal notes, if such notes are kept in the therapist's sole possession for his own personal use and are not disclosed to any other person, except the therapist's supervisor, consulting therapist or attorney. If at any time such notes are disclosed, they shall be considered part of the recipient's record for purposes of this Act. "Record" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR 164.514. "Record" does not include a reference to the receipt of mental health or developmental disabilities services noted during a patient history and physical or other summary of care.

"Record custodian" means a person responsible for maintaining a recipient's record.

"Research" has the meaning ascribed to it under HIPAA as specified in 45 CFR 164.501.

"Therapist" means a psychiatrist, physician, psychologist, social worker, or nurse providing mental health or

developmental disabilities services or any other person not prohibited by law from providing such services or from holding himself out as a therapist if the recipient reasonably believes that such person is permitted to do so. Therapist includes any successor of the therapist.

"Therapeutic relationship" means the receipt by a recipient of mental health or developmental disabilities services from a therapist. "Therapeutic relationship" does not include independent evaluations for a purpose other than the provision of mental health or developmental disabilities services.

(Source: P.A. 103-508, eff. 8-4-23.)

(740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

Sec. 11. Disclosure of records and communications. Records and communications may be disclosed:

(i) in accordance with the provisions of the Abused and Neglected Child Reporting Act, subsection (u) of Section 5 of the Children and Family Services Act, or Section 7.4 of the Child Care Act of 1969;

(ii) when, and to the extent, a therapist, in his or her sole discretion, determines that disclosure is necessary to initiate or continue civil commitment or involuntary treatment proceedings under the laws of this State or to otherwise protect the recipient or other person against a clear, imminent risk of serious physical

or mental injury or disease or death being inflicted upon the recipient or by the recipient on himself or another;

(iii) when, and to the extent disclosure is, in the sole discretion of the therapist, necessary to the provision of emergency medical care to a recipient who is unable to assert or waive his or her rights hereunder;

(iv) when disclosure is necessary to collect sums or receive third party payment representing charges for mental health or developmental disabilities services provided by a therapist or agency to a recipient under Chapter V of the Mental Health and Developmental Disabilities Code or to transfer debts under the Uncollected State Claims Act; however, disclosure shall be limited to information needed to pursue collection, and the information so disclosed shall not be used for any other purposes nor shall it be redisclosed except in connection with collection activities;

(v) when requested by a family member, the Department of Human Services may assist in the location of the interment site of a deceased recipient who is interred in a cemetery established under Section 26 of the Mental Health and Developmental Disabilities Administrative Act;

(vi) in judicial proceedings under Article VIII of Chapter III and Article V of Chapter IV of the Mental Health and Developmental Disabilities Code and proceedings and investigations preliminary thereto, to the State's

Attorney for the county or residence of a person who is the subject of such proceedings, or in which the person is found, or in which the facility is located, to the attorney representing the petitioner in the judicial proceedings, to the attorney representing the recipient in the judicial proceedings, to any person or agency providing mental health services that are the subject of the proceedings and to that person's or agency's attorney, to any court personnel, including but not limited to judges and circuit court clerks, and to a guardian ad litem if one has been appointed by the court. Information disclosed under this subsection shall not be utilized for any other purpose nor be redisclosed except in connection with the proceedings or investigations. Copies of any records provided to counsel for a petitioner shall be deleted or destroyed at the end of the proceedings and counsel for petitioner shall certify to the court in writing that he or she has done so. At the request of a recipient or his or her counsel, the court shall issue a protective order insuring the confidentiality of any records or communications provided to counsel for a petitioner;

(vii) when, and to the extent disclosure is necessary to comply with the requirements of the Census Bureau in taking the federal Decennial Census;

(viii) when, and to the extent, in the therapist's

sole discretion, disclosure is necessary to warn or protect a specific individual against whom a recipient has made a specific threat of violence where there exists a therapist-recipient relationship or a special recipient-individual relationship;

(ix) in accordance with the Sex Offender Registration Act;

(x) in accordance with the Rights of Crime Victims and Witnesses Act;

(xi) in accordance with Section 6 of the Abused and Neglected Long Term Care Facility Residents Reporting Act;

(xii) in accordance with Section 55 of the Abuse of Adults with Disabilities Intervention Act;

(xiii) to an HIE as specifically allowed under this Act for HIE purposes and in accordance with any applicable requirements of the HIE; ~~and~~

(xiv) to a law enforcement agency in connection with the investigation or recovery of a person who has left a mental health or developmental disability facility as defined in Section 1-107 or 1-114 of the Mental Health and Developmental Disabilities Code or the custody of the Department of Human Services without being duly discharged or being free to do so; however, disclosure shall be limited to identifying information as defined in Section 12.2 of this Act; and

(xv) for research in accordance with the requirements



set forth under HIPAA. Without limiting the generality of the foregoing, any authorization obtained in connection with research that meets the requirements of 45 CFR 164.508(c) shall be exempt from the consent requirements of Section 5 of this Act.

Any person, institution, or agency, under this Act, participating in good faith in the making of a report under the Abused and Neglected Child Reporting Act or in the disclosure of records and communications under this Section, shall have immunity from any liability, civil, criminal or otherwise, that might result by reason of such action. For the purpose of any proceeding, civil or criminal, arising out of a report or disclosure under this Section, the good faith of any person, institution, or agency so reporting or disclosing shall be presumed.

(Source: P.A. 98-378, eff. 8-16-13; 99-216, eff. 7-31-15.)