

1 AN ACT concerning civil law.

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

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

7 (740 ILCS 110/2) (from Ch. 91 1/2, par. 802)

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

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

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

16 "Confidential communication" or "communication" means any
17 communication made by a recipient or other person to a
18 therapist or to or in the presence of other persons during or
19 in connection with providing mental health or developmental
20 disability services to a recipient. Communication includes
21 information which indicates that a person is a recipient.

22 "Communication" does not include information that has been
23 de-identified in accordance with HIPAA, as specified in 45 CFR

1 164.514.

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

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

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

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

14 "HIPAA" means the Health Insurance Portability and
15 Accountability Act of 1996, Public Law 104-191, and any
16 subsequent amendments thereto and any regulations promulgated
17 thereunder, including the Security Rule, as specified in 45
18 CFR 164.302-18, and the Privacy Rule, as specified in 45 CFR
19 164.500-34.

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

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

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

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

9 "Personal notes" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (xiv) to a law enforcement agency in connection with
18 the investigation or recovery of a person who has left a
19 mental health or developmental disability facility as
20 defined in Section 1-107 or 1-114 of the Mental Health and
21 Developmental Disabilities Code or the custody of the
22 Department of Human Services without being duly discharged
23 or being free to do so; however, disclosure shall be
24 limited to identifying information as defined in Section
25 12.2 of this Act; and—

26 (xv) for research in accordance with the requirements

1 set forth under HIPAA. Without limiting the generality of
2 the foregoing, any authorization obtained in connection
3 with research that meets the requirements of 45 CFR
4 164.508(c) shall be exempt from the consent requirements
5 of Section 5 of this Act.

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

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