



Sen. Robert Peters

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LRB103 37694 JRC 70975 a

1 AMENDMENT TO SENATE BILL 3288

2 AMENDMENT NO. _____. Amend Senate Bill 3288 by replacing
3 everything after the enacting clause with the following:

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

1 communication made by a recipient or other person to a
2 therapist or to or in the presence of other persons during or
3 in connection with providing mental health or developmental
4 disability services to a recipient. Communication includes
5 information which indicates that a person is a recipient.
6 "Communication" does not include information that has been
7 de-identified in accordance with HIPAA, as specified in 45 CFR
8 164.514.

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

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

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

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

21 "HIPAA" means the Health Insurance Portability and
22 Accountability Act of 1996, Public Law 104-191, and any
23 subsequent amendments thereto and any regulations promulgated
24 thereunder, including the Security Rule, as specified in 45
25 CFR 164.302-18, and the Privacy Rule, as specified in 45 CFR
26 164.500-34.

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

5 "Interdisciplinary team" means a group of persons
6 representing different clinical disciplines, such as medicine,
7 nursing, social work, and psychology, providing and
8 coordinating the care and treatment for a recipient of mental
9 health or developmental disability services. The group may be
10 composed of individuals employed by one provider or multiple
11 providers.

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

16 "Personal notes" means:

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

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

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

26 "Parent" means a parent or, in the absence of a parent or

1 guardian, a person in loco parentis.

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

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

1 history and physical or other summary of care.

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

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

6 "Therapist" means a psychiatrist, physician, psychologist,
7 social worker, or nurse providing mental health or
8 developmental disabilities services or any other person not
9 prohibited by law from providing such services or from holding
10 himself out as a therapist if the recipient reasonably
11 believes that such person is permitted to do so. Therapist
12 includes any successor of the therapist.

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

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

20 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

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

23 (i) in accordance with the provisions of the Abused
24 and Neglected Child Reporting Act, subsection (u) of
25 Section 5 of the Children and Family Services Act, or

1 Section 7.4 of the Child Care Act of 1969;

2 (ii) when, and to the extent, a therapist, in his or
3 her sole discretion, determines that disclosure is
4 necessary to initiate or continue civil commitment or
5 involuntary treatment proceedings under the laws of this
6 State or to otherwise protect the recipient or other
7 person against a clear, imminent risk of serious physical
8 or mental injury or disease or death being inflicted upon
9 the recipient or by the recipient on himself or another;

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

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

25 (v) when requested by a family member, the Department
26 of Human Services may assist in the location of the

1 interment site of a deceased recipient who is interred in
2 a cemetery established under Section 26 of the Mental
3 Health and Developmental Disabilities Administrative Act;

4 (vi) in judicial proceedings under Article VIII of
5 Chapter III and Article V of Chapter IV of the Mental
6 Health and Developmental Disabilities Code and proceedings
7 and investigations preliminary thereto, to the State's
8 Attorney for the county or residence of a person who is the
9 subject of such proceedings, or in which the person is
10 found, or in which the facility is located, to the
11 attorney representing the petitioner in the judicial
12 proceedings, to the attorney representing the recipient in
13 the judicial proceedings, to any person or agency
14 providing mental health services that are the subject of
15 the proceedings and to that person's or agency's attorney,
16 to any court personnel, including but not limited to
17 judges and circuit court clerks, and to a guardian ad
18 litem if one has been appointed by the court. Information
19 disclosed under this subsection shall not be utilized for
20 any other purpose nor be redisclosed except in connection
21 with the proceedings or investigations. Copies of any
22 records provided to counsel for a petitioner shall be
23 deleted or destroyed at the end of the proceedings and
24 counsel for petitioner shall certify to the court in
25 writing that he or she has done so. At the request of a
26 recipient or his or her counsel, the court shall issue a

1 protective order insuring the confidentiality of any
2 records or communications provided to counsel for a
3 petitioner;

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

7 (viii) when, and to the extent, in the therapist's
8 sole discretion, disclosure is necessary to warn or
9 protect a specific individual against whom a recipient has
10 made a specific threat of violence where there exists a
11 therapist-recipient relationship or a special
12 recipient-individual relationship;

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

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

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

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

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

24 (xiv) to a law enforcement agency in connection with
25 the investigation or recovery of a person who has left a
26 mental health or developmental disability facility as

1 defined in Section 1-107 or 1-114 of the Mental Health and
2 Developmental Disabilities Code or the custody of the
3 Department of Human Services without being duly discharged
4 or being free to do so; however, disclosure shall be
5 limited to identifying information as defined in Section
6 12.2 of this Act; ~~and~~.

7 (xv) for research in accordance with the requirements
8 set forth under HIPAA. Without limiting the generality of
9 the foregoing, any authorization obtained in connection
10 with research that meets the requirements of 45 CFR
11 164.508(c) shall be exempt from the consent requirements
12 of Section 5 of this Act.

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

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