Rep. Jennifer Gong-Gershowitz

Filed: 5/25/2021

AMENDMENT TO SENATE BILL 1970

AMENDMENT NO. _____. Amend Senate Bill 1970 by replacing everything after the enacting clause with the following:

"Section 5. The Mental Health and Developmental Disabilities Confidentiality Act is amended by adding Section 5.5 as follows:

(740 ILCS 110/5.5 new)

Sec. 5.5. Limited access to basic inpatient mental health information.

(a) For a recipient who is an inpatient of a mental health facility, an individual is eligible, upon request, to obtain the protected mental health information of the recipient that is directly relevant to that individual's involvement with the recipient's mental health care, or payment related to the recipient's mental health care, subject to the conditions set forth in Section (b), if the individual:

(1) provides proof of identity to the mental health facility; and

(2) provides a statement in writing that:

(A) declares that there is no current or pending order of protection involving both the individual and the recipient;

(B) if the individual is the recipient's spouse, declares that no action is pending between the individual and the recipient under the Illinois Marriage and Dissolution of Marriage Act or any substantially similar federal or other state dissolution of marriage statute; and

(C) provides evidence sufficient to establish the individual's participation in the recipient's care or payment for the recipient's care; factors that may be considered to establish the individual's involvement in a recipient's care include, but are not limited to:

(i) the individual resides at the same address as the recipient;

(ii) the individual regularly assists the recipient in scheduling and attending appointments with mental health care providers, including mental health residential providers, and gives the name and contact information of those mental health care or residential providers, or alternatively provides documentation that the

individual has paid for services to those mental health care or residential providers;

(iii) the individual regularly assists the recipient in filling prescriptions for medication relating to the recipient's mental health condition and gives the name and contact information of the prescribing provider, or alternatively provides documentation that the individual has paid for prescriptions related to the recipient's mental health condition from the prescribing provider;

(iv) the individual is an adult and is the recipient's parent, spouse, sibling, child, or grandchild;

(v) the individual has been identified as an emergency contact for the recipient; and

(vi) the individual provides documentation that the individual holds the health insurance policy under which the recipient is a beneficiary with respect to mental health care.

(b) An individual who satisfies the requirements of Section (a) is eligible to receive information under this Section if, at the time any disclosure is made, the recipient's treating physician has determined, after thorough clinical assessment by the treatment team, (i) that the recipient lacks the capacity to make a reasoned decision about

the disclosure under Section 5, (ii) the treating physician is able to determine in the exercise of the physician's professional judgment that the recipient is not at risk of abuse or neglect as a result of the disclosure, and (iii) that the disclosure is in the recipient's best interest. When making a decision regarding the recipient's best interest, the physician shall give substantial consideration to any prior instructions from a recipient identifying individuals with whom the recipient's information may be shared. No disclosure pursuant to this Section may be made at any time when a recipient has the capacity to make a decision about the disclosure.

(c) Whenever the disclosure of any information is made without consent pursuant to this Section, (i) the recipient shall be provided with written notification of the disclosure and afforded the opportunity to designate an agent under the Powers of Attorney for Health Care Law or an attorney-in-fact under the Mental Health Treatment Preference Declaration Act, and (ii) a notation of the information disclosed and the purpose of the disclosure or use shall be noted in the recipient's record together with the date and name of the person to whom the disclosure was made.

(d) This Section allows for the exchange of information only when the requirements of this Section are met and the recipient lacks the capacity for informed consent. Once the recipient regains the capacity for informed consent, this

Section no longer applies and any allowance for the exchange of information authorized under this Section between individuals and medical personnel is terminated.

(e) An individual who receives information pursuant to this Section is eligible to access the following information only to the extent that such information is directly relevant to the individual's involvement with the recipient's care or payment related to the recipient's health care or needed for notification purposes. Such information is limited to the following:

(1) whether the recipient is located at the inpatient mental health facility; and

(2) plans for the discharge of the recipient to the extent the treating physician is able to determine that there is no risk to the recipient of abuse, harassment, or harm in providing the information, which may include the anticipated date and time of the discharge, if known, the address where the recipient will live, and the plans, if any, for the provision of treatment in the community following discharge for the mental health condition or conditions for which the recipient was receiving treatment at the inpatient mental health facility, including, but not limited to, psychotropic medication related to the recipient's mental health condition and the identity of any person or agency expected to provide treatment to the recipient.

(f) An individual who has received information under this Section shall not redisclose the information except as necessary to provide for the recipient's care or payment for the recipient's care. The information shall be excluded from evidence in a proceeding and may not be used in any other way, unless it is being used to assert or prove that a recipient is a person with a disability in need of a limited or plenary guardian under Article XIa of the Probate Act of 1975.

(g) If access or modification of the information is requested, the request, the grounds for its acceptance or denial, and any action taken thereon, including what information was disclosed, shall be noted in the recipient's record.

(h) No information shall be disclosed under this Section if the recipient has either designated an agent under the Powers of Attorney for Health Care Law or an attorney-in-fact under the Mental Health Treatment Preference Declaration Act who is currently authorized to receive the information set forth in subsection (e).

(i) Any person who knowingly and willfully violates any provision of this Section is guilty of a Class A misdemeanor.

(j) Nothing in this Section shall be interpreted to allow a disclosure that is otherwise prohibited under any other State law or any federal law concerning informed consent.".