

1 AN ACT concerning mental health.

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 adding Section  
6 5.5 as follows:

7 (740 ILCS 110/5.5 new)

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

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

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

19 (2) provides a statement in writing that:

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

23 (B) if the individual is the recipient's spouse,

1       declares that no action is pending between the  
2       individual and the recipient under the Illinois  
3       Marriage and Dissolution of Marriage Act or any  
4       substantially similar federal or other state  
5       dissolution of marriage statute; and

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

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

13               (ii) the individual regularly assists the  
14       recipient in scheduling and attending appointments  
15       with mental health care providers, including  
16       mental health residential providers, and gives the  
17       name and contact information of those mental  
18       health care or residential providers, or  
19       alternatively provides documentation that the  
20       individual has paid for services to those mental  
21       health care or residential providers;

22               (iii) the individual regularly assists the  
23       recipient in filling prescriptions for medication  
24       relating to the recipient's mental health  
25       condition and gives the name and contact  
26       information of the prescribing provider, or

1 alternatively provides documentation that the  
2 individual has paid for prescriptions related to  
3 the recipient's mental health condition from the  
4 prescribing provider;

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

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

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

14 (b) An individual who satisfies the requirements of  
15 subsection (a) is eligible to receive information under this  
16 Section if, at the time any disclosure is made, the  
17 recipient's treating physician has determined, after thorough  
18 clinical assessment by the treatment team, (i) that the  
19 recipient lacks the capacity to make a reasoned decision about  
20 the disclosure under Section 5, (ii) the treating physician is  
21 able to determine in the exercise of the physician's  
22 professional judgment that the recipient is not at risk of  
23 abuse or neglect as a result of the disclosure, and (iii) that  
24 the disclosure is in the recipient's best interest. When  
25 making a decision regarding the recipient's best interest, the  
26 physician shall give substantial consideration to any prior

1 instructions from a recipient identifying individuals with  
2 whom the recipient's information may be shared. No disclosure  
3 pursuant to this Section may be made at any time when a  
4 recipient has the capacity to make a decision about the  
5 disclosure.

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

16 (d) This Section allows for the exchange of information  
17 only when the requirements of this Section are met and the  
18 recipient lacks the capacity for informed consent. Once the  
19 recipient regains the capacity for informed consent, this  
20 Section no longer applies and any allowance for the exchange  
21 of information authorized under this Section between  
22 individuals and medical personnel is terminated.

23 (e) An individual who receives information pursuant to  
24 this Section is eligible to access the following information  
25 only to the extent that such information is directly relevant  
26 to the individual's involvement with the recipient's care or

1 payment related to the recipient's health care or needed for  
2 notification purposes. Such information is limited to the  
3 following:

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

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

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

1 guardian under Article XIa of the Probate Act of 1975.

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

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

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

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