



93RD GENERAL ASSEMBLY
State of Illinois
2003 and 2004

Introduced 2/6/2004, by Ira I. Silverstein

SYNOPSIS AS INTRODUCED:

740 ILCS 110/10

from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Authorizes disclosure of the records of a recipient of mental health or developmental disability services during the course of an assessment authorized by the Abuse of Adults with Disabilities Intervention Act. Effective immediately.

LRB093 18181 DRJ 43876 b

1 AN ACT concerning civil liabilities.

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 Section 10 as follows:

7 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

8 Sec. 10. (a) Except as provided herein, in any civil,
9 criminal, administrative, or legislative proceeding, or in any
10 proceeding preliminary thereto, a recipient, and a therapist on
11 behalf and in the interest of a recipient, has the privilege to
12 refuse to disclose and to prevent the disclosure of the
13 recipient's record or communications.

14 (1) Records and communications may be disclosed in a
15 civil, criminal or administrative proceeding in which the
16 recipient introduces his mental condition or any aspect of
17 his services received for such condition as an element of
18 his claim or defense, if and only to the extent the court
19 in which the proceedings have been brought, or, in the case
20 of an administrative proceeding, the court to which an
21 appeal or other action for review of an administrative
22 determination may be taken, finds, after in camera
23 examination of testimony or other evidence, that it is
24 relevant, probative, not unduly prejudicial or
25 inflammatory, and otherwise clearly admissible; that other
26 satisfactory evidence is demonstrably unsatisfactory as
27 evidence of the facts sought to be established by such
28 evidence; and that disclosure is more important to the
29 interests of substantial justice than protection from
30 injury to the therapist-recipient relationship or to the
31 recipient or other whom disclosure is likely to harm.
32 Except in a criminal proceeding in which the recipient, who

1 is accused in that proceeding, raises the defense of
2 insanity, no record or communication between a therapist
3 and a recipient shall be deemed relevant for purposes of
4 this subsection, except the fact of treatment, the cost of
5 services and the ultimate diagnosis unless the party
6 seeking disclosure of the communication clearly
7 establishes in the trial court a compelling need for its
8 production. However, for purposes of this Act, in any
9 action brought or defended under the Illinois Marriage and
10 Dissolution of Marriage Act, or in any action in which pain
11 and suffering is an element of the claim, mental condition
12 shall not be deemed to be introduced merely by making such
13 claim and shall be deemed to be introduced only if the
14 recipient or a witness on his behalf first testifies
15 concerning the record or communication.

16 (2) Records or communications may be disclosed in a
17 civil proceeding after the recipient's death when the
18 recipient's physical or mental condition has been
19 introduced as an element of a claim or defense by any party
20 claiming or defending through or as a beneficiary of the
21 recipient, provided the court finds, after in camera
22 examination of the evidence, that it is relevant,
23 probative, and otherwise clearly admissible; that other
24 satisfactory evidence is not available regarding the facts
25 sought to be established by such evidence; and that
26 disclosure is more important to the interests of
27 substantial justice than protection from any injury which
28 disclosure is likely to cause.

29 (3) In the event of a claim made or an action filed by
30 a recipient, or, following the recipient's death, by any
31 party claiming as a beneficiary of the recipient for injury
32 caused in the course of providing services to such
33 recipient, the therapist and other persons whose actions
34 are alleged to have been the cause of injury may disclose
35 pertinent records and communications to an attorney or
36 attorneys engaged to render advice about and to provide

1 representation in connection with such matter and to
2 persons working under the supervision of such attorney or
3 attorneys, and may testify as to such records or
4 communication in any administrative, judicial or discovery
5 proceeding for the purpose of preparing and presenting a
6 defense against such claim or action.

7 (4) Records and communications made to or by a
8 therapist in the course of examination ordered by a court
9 for good cause shown may, if otherwise relevant and
10 admissible, be disclosed in a civil, criminal, or
11 administrative proceeding in which the recipient is a party
12 or in appropriate pretrial proceedings, provided such
13 court has found that the recipient has been as adequately
14 and as effectively as possible informed before submitting
15 to such examination that such records and communications
16 would not be considered confidential or privileged. Such
17 records and communications shall be admissible only as to
18 issues involving the recipient's physical or mental
19 condition and only to the extent that these are germane to
20 such proceedings.

21 (5) Records and communications may be disclosed in a
22 proceeding under the Probate Act of 1975, to determine a
23 recipient's competency or need for guardianship, provided
24 that the disclosure is made only with respect to that
25 issue.

26 (6) Records and communications may be disclosed when
27 such are made during treatment which the recipient is
28 ordered to undergo to render him fit to stand trial on a
29 criminal charge, provided that the disclosure is made only
30 with respect to the issue of fitness to stand trial.

31 (7) Records and communications of the recipient may be
32 disclosed in any civil or administrative proceeding
33 involving the validity of or benefits under a life,
34 accident, health or disability insurance policy or
35 certificate, or Health Care Service Plan Contract,
36 insuring the recipient, but only if and to the extent that

1 the recipient's mental condition, or treatment or services
2 in connection therewith, is a material element of any claim
3 or defense of any party, provided that information sought
4 or disclosed shall not be redisclosed except in connection
5 with the proceeding in which disclosure is made.

6 (8) Records or communications may be disclosed when
7 such are relevant to a matter in issue in any action
8 brought under this Act and proceedings preliminary
9 thereto, provided that any information so disclosed shall
10 not be utilized for any other purpose nor be redisclosed
11 except in connection with such action or preliminary
12 proceedings.

13 (9) Records and communications of the recipient may be
14 disclosed in investigations of and trials for homicide when
15 the disclosure relates directly to the fact or immediate
16 circumstances of the homicide.

17 (10) Records and communications of a deceased
18 recipient may be disclosed to a coroner conducting a
19 preliminary investigation into the recipient's death under
20 Section 3-3013 of the Counties Code. However, records and
21 communications of the deceased recipient disclosed in an
22 investigation shall be limited solely to the deceased
23 recipient's records and communications relating to the
24 factual circumstances of the incident being investigated
25 in a mental health facility.

26 (11) Records and communications of a recipient shall be
27 disclosed in a proceeding where a petition or motion is
28 filed under the Juvenile Court Act of 1987 and the
29 recipient is named as a parent, guardian, or legal
30 custodian of a minor who is the subject of a petition for
31 wardship as described in Section 2-3 of that Act or a minor
32 who is the subject of a petition for wardship as described
33 in Section 2-4 of that Act alleging the minor is abused,
34 neglected, or dependent or the recipient is named as a
35 parent of a child who is the subject of a petition,
36 supplemental petition, or motion to appoint a guardian with

1 the power to consent to adoption under Section 2-29 of the
2 Juvenile Court Act of 1987.

3 (12) Records and communications of a recipient may be
4 disclosed when disclosure is necessary to collect sums or
5 receive third party payment representing charges for
6 mental health or developmental disabilities services
7 provided by a therapist or agency to a recipient; however,
8 disclosure shall be limited to information needed to pursue
9 collection, and the information so disclosed may not be
10 used for any other purposes nor may it be redisclosed
11 except in connection with collection activities. Whenever
12 records are disclosed pursuant to this subdivision (12),
13 the recipient of the records shall be advised in writing
14 that any person who discloses mental health records and
15 communications in violation of this Act may be subject to
16 civil liability pursuant to Section 15 of this Act or to
17 criminal penalties pursuant to Section 16 of this Act or
18 both.

19 (b) Before a disclosure is made under subsection (a), any
20 party to the proceeding or any other interested person may
21 request an in camera review of the record or communications to
22 be disclosed. The court or agency conducting the proceeding may
23 hold an in camera review on its own motion. When, contrary to
24 the express wish of the recipient, the therapist asserts a
25 privilege on behalf and in the interest of a recipient, the
26 court may require that the therapist, in an in camera hearing,
27 establish that disclosure is not in the best interest of the
28 recipient. The court or agency may prevent disclosure or limit
29 disclosure to the extent that other admissible evidence is
30 sufficient to establish the facts in issue. The court or agency
31 may enter such orders as may be necessary in order to protect
32 the confidentiality, privacy, and safety of the recipient or of
33 other persons. Any order to disclose or to not disclose shall
34 be considered a final order for purposes of appeal and shall be
35 subject to interlocutory appeal.

36 (c) A recipient's records and communications may be

1 disclosed to a duly authorized committee, commission or
2 subcommittee of the General Assembly which possesses subpoena
3 and hearing powers, upon a written request approved by a
4 majority vote of the committee, commission or subcommittee
5 members. The committee, commission or subcommittee may request
6 records only for the purposes of investigating or studying
7 possible violations of recipient rights. The request shall
8 state the purpose for which disclosure is sought.

9 The facility shall notify the recipient, or his guardian,
10 and therapist in writing of any disclosure request under this
11 subsection within 5 business days after such request. Such
12 notification shall also inform the recipient, or guardian, and
13 therapist of their right to object to the disclosure within 10
14 business days after receipt of the notification and shall
15 include the name, address and telephone number of the
16 committee, commission or subcommittee member or staff person
17 with whom an objection shall be filed. If no objection has been
18 filed within 15 business days after the request for disclosure,
19 the facility shall disclose the records and communications to
20 the committee, commission or subcommittee. If an objection has
21 been filed within 15 business days after the request for
22 disclosure, the facility shall disclose the records and
23 communications only after the committee, commission or
24 subcommittee has permitted the recipient, guardian or
25 therapist to present his objection in person before it and has
26 renewed its request for disclosure by a majority vote of its
27 members.

28 Disclosure under this subsection shall not occur until all
29 personally identifiable data of the recipient and provider are
30 removed from the records and communications. Disclosure under
31 this subsection shall not occur in any public proceeding.

32 (d) No party to any proceeding described under paragraphs
33 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
34 Section, nor his or her attorney, shall serve a subpoena
35 seeking to obtain access to records or communications under
36 this Act unless the subpoena is accompanied by a written order

1 issued by a judge, authorizing the disclosure of the records or
2 the issuance of the subpoena. No person shall comply with a
3 subpoena for records or communications under this Act, unless
4 the subpoena is accompanied by a written order authorizing the
5 issuance of the subpoena or the disclosure of the records.

6 (e) When a person has been transported by a peace officer
7 to a mental health facility, then upon the request of a peace
8 officer, if the person is allowed to leave the mental health
9 facility within 48 hours of arrival, excluding Saturdays,
10 Sundays, and holidays, the facility director shall notify the
11 local law enforcement authority prior to the release of the
12 person. The local law enforcement authority may re-disclose the
13 information as necessary to alert the appropriate enforcement
14 or prosecuting authority.

15 (f) A recipient's records and communications shall be
16 disclosed to the Inspector General of the Department of Human
17 Services within 10 business days of a request by the Inspector
18 General (i) in the course of an investigation authorized by the
19 Abused and Neglected Long Term Care Facility Residents
20 Reporting Act and applicable rule or (ii) during the course of
21 an assessment authorized by the Abuse of Adults with
22 Disabilities Intervention Act and applicable rule. The request
23 shall be in writing and signed by the Inspector General or his
24 or her designee. The request shall state the purpose for which
25 disclosure is sought. Any person who knowingly and willfully
26 refuses to comply with such a request is guilty of a Class A
27 misdemeanor.

28 (Source: P.A. 91-726, eff. 6-2-00; 92-358, eff. 8-15-01;
29 92-708, eff. 7-19-02.)

30 Section 99. Effective date. This Act takes effect upon
31 becoming law.