

# HB3843



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

**HB3843**

Introduced 2/25/2009, by Rep. Lou Lang

#### SYNOPSIS AS INTRODUCED:

740 ILCS 110/10

from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Changes reference from the Abused and Neglected Long Term Care Facility Residents Reporting Act to the Department of Human Services Act. Provides that a recipient's records and communications shall be disclosed pursuant to the Department of Human Services Act in testimony at health care worker registry hearings or preliminary proceedings when relevant provided that information so disclosed shall not be utilized for any other purpose nor be redisclosed, except in connection with those proceedings. Effective immediately.

LRB096 04214 AJ0 14260 b

A BILL FOR

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 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

1 relevant, probative, not unduly prejudicial or  
2 inflammatory, and otherwise clearly admissible; that other  
3 satisfactory evidence is demonstrably unsatisfactory as  
4 evidence of the facts sought to be established by such  
5 evidence; and that disclosure is more important to the  
6 interests of substantial justice than protection from  
7 injury to the therapist-recipient relationship or to the  
8 recipient or other whom disclosure is likely to harm.  
9 Except in a criminal proceeding in which the recipient, who  
10 is accused in that proceeding, raises the defense of  
11 insanity, no record or communication between a therapist  
12 and a recipient shall be deemed relevant for purposes of  
13 this subsection, except the fact of treatment, the cost of  
14 services and the ultimate diagnosis unless the party  
15 seeking disclosure of the communication clearly  
16 establishes in the trial court a compelling need for its  
17 production. However, for purposes of this Act, in any  
18 action brought or defended under the Illinois Marriage and  
19 Dissolution of Marriage Act, or in any action in which pain  
20 and suffering is an element of the claim, mental condition  
21 shall not be deemed to be introduced merely by making such  
22 claim and shall be deemed to be introduced only if the  
23 recipient or a witness on his behalf first testifies  
24 concerning the record or communication.

25 (2) Records or communications may be disclosed in a  
26 civil proceeding after the recipient's death when the

1 recipient's physical or mental condition has been  
2 introduced as an element of a claim or defense by any party  
3 claiming or defending through or as a beneficiary of the  
4 recipient, provided the court finds, after in camera  
5 examination of the evidence, that it is relevant,  
6 probative, and otherwise clearly admissible; that other  
7 satisfactory evidence is not available regarding the facts  
8 sought to be established by such evidence; and that  
9 disclosure is more important to the interests of  
10 substantial justice than protection from any injury which  
11 disclosure is likely to cause.

12 (3) In the event of a claim made or an action filed by  
13 a recipient, or, following the recipient's death, by any  
14 party claiming as a beneficiary of the recipient for injury  
15 caused in the course of providing services to such  
16 recipient, the therapist and other persons whose actions  
17 are alleged to have been the cause of injury may disclose  
18 pertinent records and communications to an attorney or  
19 attorneys engaged to render advice about and to provide  
20 representation in connection with such matter and to  
21 persons working under the supervision of such attorney or  
22 attorneys, and may testify as to such records or  
23 communication in any administrative, judicial or discovery  
24 proceeding for the purpose of preparing and presenting a  
25 defense against such claim or action.

26 (4) Records and communications made to or by a

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

14 (5) Records and communications may be disclosed in a  
15 proceeding under the Probate Act of 1975, to determine a  
16 recipient's competency or need for guardianship, provided  
17 that the disclosure is made only with respect to that  
18 issue.

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

24 (7) Records and communications of the recipient may be  
25 disclosed in any civil or administrative proceeding  
26 involving the validity of or benefits under a life,

1 accident, health or disability insurance policy or  
2 certificate, or Health Care Service Plan Contract,  
3 insuring the recipient, but only if and to the extent that  
4 the recipient's mental condition, or treatment or services  
5 in connection therewith, is a material element of any claim  
6 or defense of any party, provided that information sought  
7 or disclosed shall not be redisclosed except in connection  
8 with the proceeding in which disclosure is made.

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

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

20 (10) Records and communications of a deceased  
21 recipient may be disclosed to a coroner conducting a  
22 preliminary investigation into the recipient's death under  
23 Section 3-3013 of the Counties Code. However, records and  
24 communications of the deceased recipient disclosed in an  
25 investigation shall be limited solely to the deceased  
26 recipient's records and communications relating to the

1 factual circumstances of the incident being investigated  
2 in a mental health facility.

3 (11) Records and communications of a recipient shall be  
4 disclosed in a proceeding where a petition or motion is  
5 filed under the Juvenile Court Act of 1987 and the  
6 recipient is named as a parent, guardian, or legal  
7 custodian of a minor who is the subject of a petition for  
8 wardship as described in Section 2-3 of that Act or a minor  
9 who is the subject of a petition for wardship as described  
10 in Section 2-4 of that Act alleging the minor is abused,  
11 neglected, or dependent or the recipient is named as a  
12 parent of a child who is the subject of a petition,  
13 supplemental petition, or motion to appoint a guardian with  
14 the power to consent to adoption under Section 2-29 of the  
15 Juvenile Court Act of 1987.

16 (12) Records and communications of a recipient may be  
17 disclosed when disclosure is necessary to collect sums or  
18 receive third party payment representing charges for  
19 mental health or developmental disabilities services  
20 provided by a therapist or agency to a recipient; however,  
21 disclosure shall be limited to information needed to pursue  
22 collection, and the information so disclosed may not be  
23 used for any other purposes nor may it be redisclosed  
24 except in connection with collection activities. Whenever  
25 records are disclosed pursuant to this subdivision (12),  
26 the recipient of the records shall be advised in writing

1           that any person who discloses mental health records and  
2           communications in violation of this Act may be subject to  
3           civil liability pursuant to Section 15 of this Act or to  
4           criminal penalties pursuant to Section 16 of this Act or  
5           both.

6           (b) Before a disclosure is made under subsection (a), any  
7           party to the proceeding or any other interested person may  
8           request an in camera review of the record or communications to  
9           be disclosed. The court or agency conducting the proceeding may  
10          hold an in camera review on its own motion. When, contrary to  
11          the express wish of the recipient, the therapist asserts a  
12          privilege on behalf and in the interest of a recipient, the  
13          court may require that the therapist, in an in camera hearing,  
14          establish that disclosure is not in the best interest of the  
15          recipient. The court or agency may prevent disclosure or limit  
16          disclosure to the extent that other admissible evidence is  
17          sufficient to establish the facts in issue. The court or agency  
18          may enter such orders as may be necessary in order to protect  
19          the confidentiality, privacy, and safety of the recipient or of  
20          other persons. Any order to disclose or to not disclose shall  
21          be considered a final order for purposes of appeal and shall be  
22          subject to interlocutory appeal.

23          (c) A recipient's records and communications may be  
24          disclosed to a duly authorized committee, commission or  
25          subcommittee of the General Assembly which possesses subpoena  
26          and hearing powers, upon a written request approved by a



1 majority vote of the committee, commission or subcommittee  
2 members. The committee, commission or subcommittee may request  
3 records only for the purposes of investigating or studying  
4 possible violations of recipient rights. The request shall  
5 state the purpose for which disclosure is sought.

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

25 Disclosure under this subsection shall not occur until all  
26 personally identifiable data of the recipient and provider are

1 removed from the records and communications. Disclosure under  
2 this subsection shall not occur in any public proceeding.

3 (d) No party to any proceeding described under paragraphs  
4 (1), (2), (3), (4), (7), or (8) of subsection (a) of this  
5 Section, nor his or her attorney, shall serve a subpoena  
6 seeking to obtain access to records or communications under  
7 this Act unless the subpoena is accompanied by a written order  
8 issued by a judge, authorizing the disclosure of the records or  
9 the issuance of the subpoena. No person shall comply with a  
10 subpoena for records or communications under this Act, unless  
11 the subpoena is accompanied by a written order authorizing the  
12 issuance of the subpoena or the disclosure of the records.

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

22 (f) A recipient's records and communications shall be  
23 disclosed to the Inspector General of the Department of Human  
24 Services within 10 business days of a request by the Inspector  
25 General (i) in the course of an investigation authorized by the  
26 Department of Human Services Act ~~Abused and Neglected Long Term~~

1 ~~Care Facility Residents Reporting Act~~ and applicable rule or  
2 (ii) during the course of an assessment authorized by the Abuse  
3 of Adults with Disabilities Intervention Act and applicable  
4 rule. The request shall be in writing and signed by the  
5 Inspector General or his or her designee. The request shall  
6 state the purpose for which disclosure is sought. Any person  
7 who knowingly and willfully refuses to comply with such a  
8 request is guilty of a Class A misdemeanor. A recipient's  
9 records and communications shall also be disclosed pursuant to  
10 subsection (g-5) of Section 1-17 of the Department of Human  
11 Services Act in testimony at health care worker registry  
12 hearings or preliminary proceedings when such are relevant to  
13 the matter in issue, provided that any information so disclosed  
14 shall not be utilized for any other purpose nor be redisclosed  
15 except in connection with such action or preliminary  
16 proceedings.

17 (Source: P.A. 92-358, eff. 8-15-01; 92-708, eff. 7-19-02;  
18 93-751, eff. 7-15-04.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law.