



Rep. Chapin Rose

Filed: 3/24/2011

09700HB2362ham001

LRB097 08788 AJ0 53352 a

1 AMENDMENT TO HOUSE BILL 2362

2 AMENDMENT NO. _____. Amend House Bill 2362 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 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

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

1 and suffering is an element of the claim, mental condition
2 shall not be deemed to be introduced merely by making such
3 claim and shall be deemed to be introduced only if the
4 recipient or a witness on his behalf first testifies
5 concerning the record or communication.

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

19 (3) In the event of a claim made or an action filed by
20 a recipient, or, following the recipient's death, by any
21 party claiming as a beneficiary of the recipient for injury
22 caused in the course of providing services to such
23 recipient, the therapist and other persons whose actions
24 are alleged to have been the cause of injury may disclose
25 pertinent records and communications to an attorney or
26 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

1 such are made during treatment which the recipient is
2 ordered to undergo to render him fit to stand trial on a
3 criminal charge, provided that the disclosure is made only
4 with respect to the issue of fitness to stand trial.
5 Records and communications made to or by a therapist in the
6 course of an assessment, diagnosis, screening, or
7 treatment at an outpatient facility, a residential
8 treatment facility, or a local jail or detention center may
9 be disclosed to a court-appointed therapist, psychologist,
10 or psychiatrist for use in determining a person's fitness
11 to stand trial. Such records and communications shall be
12 admissible only as to issues involving the recipient's
13 physical or mental condition and only to the extent that
14 these are germane to such proceedings.

15 (7) Records and communications of the recipient may be
16 disclosed in any civil or administrative proceeding
17 involving the validity of or benefits under a life,
18 accident, health or disability insurance policy or
19 certificate, or Health Care Service Plan Contract,
20 insuring the recipient, but only if and to the extent that
21 the recipient's mental condition, or treatment or services
22 in connection therewith, is a material element of any claim
23 or defense of any party, provided that information sought
24 or disclosed shall not be redisclosed except in connection
25 with the proceeding in which disclosure is made.

26 (8) Records or communications may be disclosed when

1 such are relevant to a matter in issue in any action
2 brought under this Act and proceedings preliminary
3 thereto, provided that any information so disclosed shall
4 not be utilized for any other purpose nor be redisclosed
5 except in connection with such action or preliminary
6 proceedings.

7 (9) Records and communications of the recipient may be
8 disclosed in investigations of and trials for homicide when
9 the disclosure relates directly to the fact or immediate
10 circumstances of the homicide.

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

20 (11) Records and communications of a recipient shall be
21 disclosed in a proceeding where a petition or motion is
22 filed under the Juvenile Court Act of 1987 and the
23 recipient is named as a parent, guardian, or legal
24 custodian of a minor who is the subject of a petition for
25 wardship as described in Section 2-3 of that Act or a minor
26 who is the subject of a petition for wardship as described

1 in Section 2-4 of that Act alleging the minor is abused,
2 neglected, or dependent or the recipient is named as a
3 parent of a child who is the subject of a petition,
4 supplemental petition, or motion to appoint a guardian with
5 the power to consent to adoption under Section 2-29 of the
6 Juvenile Court Act of 1987.

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

23 (b) Before a disclosure is made under subsection (a), any
24 party to the proceeding or any other interested person may
25 request an in camera review of the record or communications to
26 be disclosed. The court or agency conducting the proceeding may

1 hold an in camera review on its own motion. When, contrary to
2 the express wish of the recipient, the therapist asserts a
3 privilege on behalf and in the interest of a recipient, the
4 court may require that the therapist, in an in camera hearing,
5 establish that disclosure is not in the best interest of the
6 recipient. The court or agency may prevent disclosure or limit
7 disclosure to the extent that other admissible evidence is
8 sufficient to establish the facts in issue. The court or agency
9 may enter such orders as may be necessary in order to protect
10 the confidentiality, privacy, and safety of the recipient or of
11 other persons. Any order to disclose or to not disclose shall
12 be considered a final order for purposes of appeal and shall be
13 subject to interlocutory appeal.

14 (c) A recipient's records and communications may be
15 disclosed to a duly authorized committee, commission or
16 subcommittee of the General Assembly which possesses subpoena
17 and hearing powers, upon a written request approved by a
18 majority vote of the committee, commission or subcommittee
19 members. The committee, commission or subcommittee may request
20 records only for the purposes of investigating or studying
21 possible violations of recipient rights. The request shall
22 state the purpose for which disclosure is sought.

23 The facility shall notify the recipient, or his guardian,
24 and therapist in writing of any disclosure request under this
25 subsection within 5 business days after such request. Such
26 notification shall also inform the recipient, or guardian, and

1 therapist of their right to object to the disclosure within 10
2 business days after receipt of the notification and shall
3 include the name, address and telephone number of the
4 committee, commission or subcommittee member or staff person
5 with whom an objection shall be filed. If no objection has been
6 filed within 15 business days after the request for disclosure,
7 the facility shall disclose the records and communications to
8 the committee, commission or subcommittee. If an objection has
9 been filed within 15 business days after the request for
10 disclosure, the facility shall disclose the records and
11 communications only after the committee, commission or
12 subcommittee has permitted the recipient, guardian or
13 therapist to present his objection in person before it and has
14 renewed its request for disclosure by a majority vote of its
15 members.

16 Disclosure under this subsection shall not occur until all
17 personally identifiable data of the recipient and provider are
18 removed from the records and communications. Disclosure under
19 this subsection shall not occur in any public proceeding.

20 (d) No party to any proceeding described under paragraphs
21 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
22 Section, nor his or her attorney, shall serve a subpoena
23 seeking to obtain access to records or communications under
24 this Act unless the subpoena is accompanied by a written order
25 issued by a judge, authorizing the disclosure of the records or
26 the issuance of the subpoena. No such written order shall be

1 issued without written notice of the motion to the recipient
2 and the treatment provider. Prior to issuance of the order,
3 each party or other person entitled to notice shall be
4 permitted an opportunity to be heard pursuant to subsection (b)
5 of this Section. No person shall comply with a subpoena for
6 records or communications under this Act, unless the subpoena
7 is accompanied by a written order authorizing the issuance of
8 the subpoena or the disclosure of the records. Each subpoena
9 duces tecum issued by a court or administrative agency or
10 served on any person pursuant to this subsection (d) shall
11 include the following language: "No person shall comply with a
12 subpoena for mental health records or communications pursuant
13 to Section 10 of the Mental Health and Developmental
14 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the
15 subpoena is accompanied by a written order that authorizes the
16 issuance of the subpoena and the disclosure of records or
17 communications."

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

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

20 (Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
21 96-1453, eff. 8-20-10.)".