

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 Sections 2 and 3 as follows:

7 (740 ILCS 110/2) (from Ch. 91 1/2, par. 802)

8 Sec. 2. The terms used in this Act, unless the context
9 requires otherwise, have the meanings ascribed to them in this
10 Section.

11 "Agent" means a person who has been legally appointed as an
12 individual's agent under a power of attorney for health care or
13 for property.

14 "Business associate" has the meaning ascribed to it under
15 HIPAA, as specified in 45 CFR 160.103.

16 "Confidential communication" or "communication" means any
17 communication made by a recipient or other person to a
18 therapist or to or in the presence of other persons during or
19 in connection with providing mental health or developmental
20 disability services to a recipient. Communication includes
21 information which indicates that a person is a recipient.

22 "Communication" does not include information that has been
23 de-identified in accordance with HIPAA, as specified in 45 CFR

1 164.514.

2 "Covered entity" has the meaning ascribed to it under
3 HIPAA, as specified in 45 CFR 160.103.

4 "Guardian" means a legally appointed guardian or
5 conservator of the person.

6 "Health information exchange" or "HIE" means a health
7 information exchange or health information organization that
8 oversees and governs the electronic exchange of health
9 information that (i) is established pursuant to the Illinois
10 Health Information Exchange and Technology Act, or any
11 subsequent amendments thereto, and any administrative rules
12 promulgated thereunder; or (ii) has established a data sharing
13 arrangement with the Illinois Health Information Exchange; or
14 (iii) as of the effective date of this amendatory Act of the
15 98th General Assembly, was designated by the Illinois Health
16 Information Exchange Authority Board as a member of, or was
17 represented on, the Authority Board's Regional Health
18 Information Exchange Workgroup; provided that such designation
19 shall not require the establishment of a data sharing
20 arrangement or other participation with the Illinois Health
21 Information Exchange or the payment of any fee.

22 "HIE purposes" means those uses and disclosures (as those
23 terms are defined under HIPAA, as specified in 45 CFR 160.103)
24 for activities of an HIE: (i) set forth in the Illinois Health
25 Information Exchange and Technology Act or any subsequent
26 amendments thereto and any administrative rules promulgated

1 thereunder; or (ii) which are permitted under federal law.

2 "HIPAA" means the Health Insurance Portability and
3 Accountability Act of 1996, Public Law 104-191, and any
4 subsequent amendments thereto and any regulations promulgated
5 thereunder, including the Security Rule, as specified in 45 CFR
6 164.302-18, and the Privacy Rule, as specified in 45 CFR
7 164.500-34.

8 "Integrated health system" means an organization with a
9 system of care which incorporates physical and behavioral
10 healthcare and includes care delivered in an inpatient and
11 outpatient setting.

12 "Interdisciplinary team" means a group of persons
13 representing different clinical disciplines, such as medicine,
14 nursing, social work, and psychology, providing and
15 coordinating the care and treatment for a recipient of mental
16 health or developmental disability services. The group may be
17 composed of individuals employed by one provider or multiple
18 providers.

19 "Mental health or developmental disabilities services" or
20 "services" includes but is not limited to examination,
21 diagnosis, evaluation, treatment, training, pharmaceuticals,
22 aftercare, habilitation or rehabilitation.

23 "Personal notes" means:

24 (i) information disclosed to the therapist in
25 confidence by other persons on condition that such
26 information would never be disclosed to the recipient or

1 other persons;

2 (ii) information disclosed to the therapist by the
3 recipient which would be injurious to the recipient's
4 relationships to other persons, and

5 (iii) the therapist's speculations, impressions,
6 hunches, and reminders.

7 "Parent" means a parent or, in the absence of a parent or
8 guardian, a person in loco parentis.

9 "Recipient" means a person who is receiving or has received
10 mental health or developmental disabilities services.

11 "Record" means any record kept by a therapist or by an
12 agency in the course of providing mental health or
13 developmental disabilities service to a recipient concerning
14 the recipient and the services provided. "Records" includes all
15 records maintained by a court that have been created in
16 connection with, in preparation for, or as a result of the
17 filing of any petition or certificate under Chapter II, Chapter
18 III, or Chapter IV of the Mental Health and Developmental
19 Disabilities Code and includes the petitions, certificates,
20 dispositional reports, treatment plans, and reports of
21 diagnostic evaluations and of hearings under Article VIII of
22 Chapter III or under Article V of Chapter IV of that Code.
23 Record does not include the therapist's personal notes, if such
24 notes are kept in the therapist's sole possession for his own
25 personal use and are not disclosed to any other person, except
26 the therapist's supervisor, consulting therapist or attorney.

1 If at any time such notes are disclosed, they shall be
2 considered part of the recipient's record for purposes of this
3 Act. "Record" does not include information that has been
4 de-identified in accordance with HIPAA, as specified in 45 CFR
5 164.514. "Record" does not include a reference to the receipt
6 of mental health or developmental disabilities services noted
7 during a patient history and physical or other summary of care.

8 "Record custodian" means a person responsible for
9 maintaining a recipient's record.

10 "Therapist" means a psychiatrist, physician, psychologist,
11 social worker, or nurse providing mental health or
12 developmental disabilities services or any other person not
13 prohibited by law from providing such services or from holding
14 himself out as a therapist if the recipient reasonably believes
15 that such person is permitted to do so. Therapist includes any
16 successor of the therapist.

17 "Therapeutic relationship" means the receipt by a
18 recipient of mental health or developmental disabilities
19 services from a therapist. "Therapeutic relationship" does not
20 include independent evaluations for a purpose other than the
21 provision of mental health or developmental disabilities
22 services.

23 (Source: P.A. 98-378, eff. 8-16-13.)

24 (740 ILCS 110/3) (from Ch. 91 1/2, par. 803)

25 Sec. 3. (a) All records and communications shall be

1 confidential and shall not be disclosed except as provided in
2 this Act. Unless otherwise expressly provided for in this Act,
3 records and communications made or created in the course of
4 providing mental health or developmental disabilities services
5 shall be protected from disclosure regardless of whether the
6 records and communications are made or created in the course of
7 a therapeutic relationship.

8 (b) A therapist is not required to but may, to the extent
9 he determines it necessary and appropriate, keep personal notes
10 regarding a recipient. Such personal notes are the work product
11 and personal property of the therapist and shall not be subject
12 to discovery in any judicial, administrative or legislative
13 proceeding or any proceeding preliminary thereto.

14 (c) Psychological test material whose disclosure would
15 compromise the objectivity or fairness of the testing process
16 may not be disclosed to anyone including the subject of the
17 test and is not subject to disclosure in any administrative,
18 judicial or legislative proceeding. However, any recipient who
19 has been the subject of the psychological test shall have the
20 right to have all records relating to that test disclosed to
21 any psychologist designated by the recipient. Requests for such
22 disclosure shall be in writing and shall comply with the
23 requirements of subsection (b) of Section 5 of this Act.

24 (Source: P.A. 86-1417.)