

1 AN ACT concerning mental health and development
2 disabilities confidentiality.

3 Be it enacted by the People of the State of Illinois,
4 represented in the General Assembly:

5 Section 5. The Mental Health and Developmental
6 Disabilities Confidentiality Act is amended by changing
7 Section 10 as follows:

8 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

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

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

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

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

33 (3) In the event of a claim made or an action filed
34 by a recipient, or, following the recipient's death, by

1 any party claiming as a beneficiary of the recipient for
2 injury caused in the course of providing services to such
3 recipient, the therapist and other persons whose actions
4 are alleged to have been the cause of injury may disclose
5 pertinent records and communications to an attorney or
6 attorneys engaged to render advice about and to provide
7 representation in connection with such matter and to
8 persons working under the supervision of such attorney or
9 attorneys, and may testify as to such records or
10 communication in any administrative, judicial or
11 discovery proceeding for the purpose of preparing and
12 presenting a defense against such claim or action.

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

27 (5) Records and communications may be disclosed in
28 a proceeding under the Probate Act of 1975, to determine
29 a recipient's competency or need for guardianship,
30 provided that the disclosure is made only with respect to
31 that issue.

32 (6) Records and communications may be disclosed
33 when such are made during treatment which the recipient
34 is ordered to undergo to render him fit to stand trial on

1 a criminal charge, provided that the disclosure is made
2 only with respect to the issue of fitness to stand trial.

3 (7) Records and communications of the recipient may
4 be disclosed in any civil or administrative proceeding
5 involving the validity of or benefits under a life,
6 accident, health or disability insurance policy or
7 certificate, or Health Care Service Plan Contract,
8 insuring the recipient, but only if and to the extent
9 that the recipient's mental condition, or treatment or
10 services in connection therewith, is a material element
11 of any claim or defense of any party, provided that
12 information sought or disclosed shall not be redisclosed
13 except in connection with the proceeding in which
14 disclosure is made.

15 (8) Records or communications may be disclosed when
16 such are relevant to a matter in issue in any action
17 brought under this Act and proceedings preliminary
18 thereto, provided that any information so disclosed shall
19 not be utilized for any other purpose nor be redisclosed
20 except in connection with such action or preliminary
21 proceedings.

22 (9) Records and communications of the recipient may
23 be disclosed in investigations of and trials for homicide
24 when the disclosure relates directly to the fact or
25 immediate circumstances of the homicide.

26 (10) Records and communications of a deceased
27 recipient may be disclosed to a coroner conducting a
28 preliminary investigation into the recipient's death
29 under Section 3-3013 of the Counties Code. However,
30 records and communications of the deceased recipient
31 disclosed in an investigation shall be limited solely to
32 the deceased recipient's records and communications
33 relating to the factual circumstances of the incident
34 being investigated in a mental health facility.

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

14 (12) Records and communications of the recipient
15 shall be disclosed upon request of a law enforcement
16 officer, a State's Attorney, the Attorney General, or a
17 designee of any of these persons upon proof that a valid
18 felony warrant was issued for the arrest of the
19 recipient. However, records and communications of the
20 recipient disclosed shall be limited solely to records
21 and communications concerning: (i) the recipient's past
22 or current presence at a mental health facility; and (ii)
23 the date of the recipient's discharge or future discharge
24 from a mental health facility.

25 (b) Before a disclosure is made under subsection (a),
26 any party to the proceeding or any other interested person
27 may request an in camera review of the record or
28 communications to be disclosed. The court or agency
29 conducting the proceeding may hold an in camera review on its
30 own motion. When, contrary to the express wish of the
31 recipient, the therapist asserts a privilege on behalf and in
32 the interest of a recipient, the court may require that the
33 therapist, in an in camera hearing, establish that disclosure
34 is not in the best interest of the recipient. The court or

1 agency may prevent disclosure or limit disclosure to the
2 extent that other admissible evidence is sufficient to
3 establish the facts in issue. The court or agency may enter
4 such orders as may be necessary in order to protect the
5 confidentiality, privacy, and safety of the recipient or of
6 other persons. Any order to disclose or to not disclose
7 shall be considered a final order for purposes of appeal and
8 shall be subject to interlocutory appeal.

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

19 The facility shall notify the recipient, or his guardian,
20 and therapist in writing of any disclosure request under this
21 subsection within 5 business days after such request. Such
22 notification shall also inform the recipient, or guardian,
23 and therapist of their right to object to the disclosure
24 within 10 business days after receipt of the notification and
25 shall include the name, address and telephone number of the
26 committee, commission or subcommittee member or staff person
27 with whom an objection shall be filed. If no objection has
28 been filed within 15 business days after the request for
29 disclosure, the facility shall disclose the records and
30 communications to the committee, commission or subcommittee.
31 If an objection has been filed within 15 business days after
32 the request for disclosure, the facility shall disclose the
33 records and communications only after the committee,
34 commission or subcommittee has permitted the recipient,

1 guardian or therapist to present his objection in person
2 before it and has renewed its request for disclosure by a
3 majority vote of its members.

4 Disclosure under this subsection shall not occur until
5 all personally identifiable data of the recipient and
6 provider are removed from the records and communications.
7 Disclosure under this subsection shall not occur in any
8 public proceeding.

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

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

29 (f) A recipient's records and communications shall be
30 disclosed to the Inspector General of the Department of Human
31 Services within 10 business days of a request by the
32 Inspector General in the course of an investigation
33 authorized by the Abused and Neglected Long Term Care
34 Facility Residents Reporting Act and applicable rule. The

1 request shall be in writing and signed by the Inspector
2 General or his or her designee. The request shall state the
3 purpose for which disclosure is sought. Any person who
4 knowingly and willfully refuses to comply with such a request
5 is guilty of a Class A misdemeanor.

6 (Source: P.A. 91-726, eff. 6-2-00; 92-358, eff. 8-15-01.)