



103RD GENERAL ASSEMBLY

State of Illinois

2023 and 2024

SB3288

Introduced 2/7/2024, by Sen. Robert Peters

SYNOPSIS AS INTRODUCED:

740 ILCS 110/2	from Ch. 91 1/2, par. 802
740 ILCS 110/5	from Ch. 91 1/2, par. 805
740 ILCS 110/11	from Ch. 91 1/2, par. 811

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Defines "research" to have the meaning that is ascribed to it in HIPAA and the Code of Federal Regulations. Changes the consent form to delete the requirement that the signature of the person giving consent or revocation of a consent does not have to be witnessed by a person who can attest to the identity of the person signing. Provides that records and communications may be disclosed for research in accordance with the requirements set forth under HIPAA and the Code of Federal Regulations.

LRB103 37694 JRC 67821 b

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, 5, and 11 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
12 an individual's agent under a power of attorney for health
13 care or 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.

10 "HIE purposes" means those uses and disclosures (as those
11 terms are defined under HIPAA, as specified in 45 CFR 160.103)
12 for activities of an HIE which are permitted under federal
13 law.

14 "HIPAA" means the Health Insurance Portability and
15 Accountability Act of 1996, Public Law 104-191, and any
16 subsequent amendments thereto and any regulations promulgated
17 thereunder, including the Security Rule, as specified in 45
18 CFR 164.302-18, and the Privacy Rule, as specified in 45 CFR
19 164.500-34.

20 "Integrated health system" means an organization with a
21 system of care which incorporates physical and behavioral
22 healthcare and includes care delivered in an inpatient and
23 outpatient setting.

24 "Interdisciplinary team" means a group of persons
25 representing different clinical disciplines, such as medicine,
26 nursing, social work, and psychology, providing and

1 coordinating the care and treatment for a recipient of mental
2 health or developmental disability services. The group may be
3 composed of individuals employed by one provider or multiple
4 providers.

5 "Mental health or developmental disabilities services" or
6 "services" includes but is not limited to examination,
7 diagnosis, evaluation, treatment, training, pharmaceuticals,
8 aftercare, habilitation or rehabilitation.

9 "Personal notes" means:

10 (i) information disclosed to the therapist in
11 confidence by other persons on condition that such
12 information would never be disclosed to the recipient or
13 other persons;

14 (ii) information disclosed to the therapist by the
15 recipient which would be injurious to the recipient's
16 relationships to other persons, and

17 (iii) the therapist's speculations, impressions,
18 hunches, and reminders.

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

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

23 "Record" means any record kept by a therapist or by an
24 agency in the course of providing mental health or
25 developmental disabilities service to a recipient concerning
26 the recipient and the services provided. "Records" includes

1 all records maintained by a court that have been created in
2 connection with, in preparation for, or as a result of the
3 filing of any petition or certificate under Chapter II,
4 Chapter III, or Chapter IV of the Mental Health and
5 Developmental Disabilities Code and includes the petitions,
6 certificates, dispositional reports, treatment plans, and
7 reports of diagnostic evaluations and of hearings under
8 Article VIII of Chapter III or under Article V of Chapter IV of
9 that Code. Record does not include the therapist's personal
10 notes, if such notes are kept in the therapist's sole
11 possession for his own personal use and are not disclosed to
12 any other person, except the therapist's supervisor,
13 consulting therapist or attorney. If at any time such notes
14 are disclosed, they shall be considered part of the
15 recipient's record for purposes of this Act. "Record" does not
16 include information that has been de-identified in accordance
17 with HIPAA, as specified in 45 CFR 164.514. "Record" does not
18 include a reference to the receipt of mental health or
19 developmental disabilities services noted during a patient
20 history and physical or other summary of care.

21 "Record custodian" means a person responsible for
22 maintaining a recipient's record.

23 "Research" has the meaning ascribed to it under HIPAA as
24 specified in 45 CFR 164.501.

25 "Therapist" means a psychiatrist, physician, psychologist,
26 social worker, or nurse providing mental health or

1 developmental disabilities services or any other person not
2 prohibited by law from providing such services or from holding
3 himself out as a therapist if the recipient reasonably
4 believes that such person is permitted to do so. Therapist
5 includes any successor of the therapist.

6 "Therapeutic relationship" means the receipt by a
7 recipient of mental health or developmental disabilities
8 services from a therapist. "Therapeutic relationship" does not
9 include independent evaluations for a purpose other than the
10 provision of mental health or developmental disabilities
11 services.

12 (Source: P.A. 103-508, eff. 8-4-23.)

13 (740 ILCS 110/5) (from Ch. 91 1/2, par. 805)

14 Sec. 5. Disclosure; consent.

15 (a) Except as provided in Sections 6 through 12.2 of this
16 Act, records and communications may be disclosed to someone
17 other than those persons listed in Section 4 of this Act only
18 with the written consent of those persons who are entitled to
19 inspect and copy a recipient's record pursuant to Section 4 of
20 this Act.

21 (b) Every consent form shall be in writing and shall
22 specify the following:

23 (1) the person or agency to whom disclosure is to be
24 made;

25 (2) the purpose for which disclosure is to be made;

- 1 (3) the nature of the information to be disclosed;
- 2 (4) the right to inspect and copy the information to
3 be disclosed;
- 4 (5) the consequences of a refusal to consent, if any; and
- 5 (6) the calendar date on which the consent expires,
6 provided that if no calendar date is stated, information
7 may be released only on the day the consent form is
8 received by the therapist; and
- 9 (7) the right to revoke the consent at any time.

10 The consent form shall be signed by the person entitled to
11 give consent ~~and the signature shall be witnessed by a person~~
12 ~~who can attest to the identity of the person so entitled.~~ A
13 copy of the consent and a notation as to any action taken
14 thereon shall be entered in the recipient's record. Any
15 revocation of consent shall be in writing, signed by the
16 person who gave the consent ~~and the signature shall be~~
17 ~~witnessed by a person who can attest to the identity of the~~
18 ~~person so entitled.~~ No written revocation of consent shall be
19 effective to prevent disclosure of records and communications
20 until it is received by the person otherwise authorized to
21 disclose records and communications.

22 (c) Only information relevant to the purpose for which
23 disclosure is sought may be disclosed. Blanket consent to the
24 disclosure of unspecified information shall not be valid.
25 Advance consent may be valid only if the nature of the
26 information to be disclosed is specified in detail and the

1 duration of the consent is indicated. Consent may be revoked
2 in writing at any time; any such revocation shall have no
3 effect on disclosures made prior thereto.

4 (d) No person or agency to whom any information is
5 disclosed under this Section may redisclose such information
6 unless the person who consented to the disclosure specifically
7 consents to such redisclosure.

8 (e) Except as otherwise provided in this Act, records and
9 communications shall remain confidential after the death of a
10 recipient and shall not be disclosed unless the recipient's
11 representative, as defined in the Probate Act of 1975 and the
12 therapist consent to such disclosure or unless disclosure is
13 authorized by court order after in camera examination and upon
14 good cause shown.

15 (f) Paragraphs (a) through (e) of this Section shall not
16 apply to and shall not be construed to limit insurance
17 companies writing Life, Accident or Health insurance as
18 defined in Section 4 of the Illinois Insurance Code in
19 obtaining general consents for the release to them or their
20 designated representatives of any and all confidential
21 communications and records kept by agencies, hospitals,
22 therapists or record custodians, and utilizing such
23 information in connection with the underwriting of
24 applications for coverage for such policies or contracts, or
25 in connection with evaluating claims or liability under such
26 policies or contracts, or coordinating benefits pursuant to

1 policy or contract provisions.

2 (Source: P.A. 90-655, eff. 7-30-98)

3 (740 ILCS 110/11) (from Ch. 91 1/2, par. 811)

4 Sec. 11. Disclosure of records and communications. Records
5 and communications may be disclosed:

6 (i) in accordance with the provisions of the Abused
7 and Neglected Child Reporting Act, subsection (u) of
8 Section 5 of the Children and Family Services Act, or
9 Section 7.4 of the Child Care Act of 1969;

10 (ii) when, and to the extent, a therapist, in his or
11 her sole discretion, determines that disclosure is
12 necessary to initiate or continue civil commitment or
13 involuntary treatment proceedings under the laws of this
14 State or to otherwise protect the recipient or other
15 person against a clear, imminent risk of serious physical
16 or mental injury or disease or death being inflicted upon
17 the recipient or by the recipient on himself or another;

18 (iii) when, and to the extent disclosure is, in the
19 sole discretion of the therapist, necessary to the
20 provision of emergency medical care to a recipient who is
21 unable to assert or waive his or her rights hereunder;

22 (iv) when disclosure is necessary to collect sums or
23 receive third party payment representing charges for
24 mental health or developmental disabilities services
25 provided by a therapist or agency to a recipient under

1 Chapter V of the Mental Health and Developmental
2 Disabilities Code or to transfer debts under the
3 Uncollected State Claims Act; however, disclosure shall be
4 limited to information needed to pursue collection, and
5 the information so disclosed shall not be used for any
6 other purposes nor shall it be redisclosed except in
7 connection with collection activities;

8 (v) when requested by a family member, the Department
9 of Human Services may assist in the location of the
10 interment site of a deceased recipient who is interred in
11 a cemetery established under Section 26 of the Mental
12 Health and Developmental Disabilities Administrative Act;

13 (vi) in judicial proceedings under Article VIII of
14 Chapter III and Article V of Chapter IV of the Mental
15 Health and Developmental Disabilities Code and proceedings
16 and investigations preliminary thereto, to the State's
17 Attorney for the county or residence of a person who is the
18 subject of such proceedings, or in which the person is
19 found, or in which the facility is located, to the
20 attorney representing the petitioner in the judicial
21 proceedings, to the attorney representing the recipient in
22 the judicial proceedings, to any person or agency
23 providing mental health services that are the subject of
24 the proceedings and to that person's or agency's attorney,
25 to any court personnel, including but not limited to
26 judges and circuit court clerks, and to a guardian ad

1 litem if one has been appointed by the court. Information
2 disclosed under this subsection shall not be utilized for
3 any other purpose nor be redisclosed except in connection
4 with the proceedings or investigations. Copies of any
5 records provided to counsel for a petitioner shall be
6 deleted or destroyed at the end of the proceedings and
7 counsel for petitioner shall certify to the court in
8 writing that he or she has done so. At the request of a
9 recipient or his or her counsel, the court shall issue a
10 protective order insuring the confidentiality of any
11 records or communications provided to counsel for a
12 petitioner;

13 (vii) when, and to the extent disclosure is necessary
14 to comply with the requirements of the Census Bureau in
15 taking the federal Decennial Census;

16 (viii) when, and to the extent, in the therapist's
17 sole discretion, disclosure is necessary to warn or
18 protect a specific individual against whom a recipient has
19 made a specific threat of violence where there exists a
20 therapist-recipient relationship or a special
21 recipient-individual relationship;

22 (ix) in accordance with the Sex Offender Registration
23 Act;

24 (x) in accordance with the Rights of Crime Victims and
25 Witnesses Act;

26 (xi) in accordance with Section 6 of the Abused and

1 Neglected Long Term Care Facility Residents Reporting Act;

2 (xii) in accordance with Section 55 of the Abuse of
3 Adults with Disabilities Intervention Act;

4 (xiii) to an HIE as specifically allowed under this
5 Act for HIE purposes and in accordance with any applicable
6 requirements of the HIE; ~~and~~

7 (xiv) to a law enforcement agency in connection with
8 the investigation or recovery of a person who has left a
9 mental health or developmental disability facility as
10 defined in Section 1-107 or 1-114 of the Mental Health and
11 Developmental Disabilities Code or the custody of the
12 Department of Human Services without being duly discharged
13 or being free to do so; however, disclosure shall be
14 limited to identifying information as defined in Section
15 12.2 of this Act; ~~and-~~

16 (xv) for research in accordance with the requirements
17 set forth under HIPAA. Without limiting the generality of
18 the foregoing, any authorization obtained in connection
19 with research that meets the requirements of 45 CFR
20 164.508(c) shall be exempt from the consent requirements
21 of Section 5 of this Act.

22 Any person, institution, or agency, under this Act,
23 participating in good faith in the making of a report under the
24 Abused and Neglected Child Reporting Act or in the disclosure
25 of records and communications under this Section, shall have
26 immunity from any liability, civil, criminal or otherwise,

1 that might result by reason of such action. For the purpose of
2 any proceeding, civil or criminal, arising out of a report or
3 disclosure under this Section, the good faith of any person,
4 institution, or agency so reporting or disclosing shall be
5 presumed.

6 (Source: P.A. 98-378, eff. 8-16-13; 99-216, eff. 7-31-15.)