

AN ACT concerning civil law.

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

Section 5. The Mental Health and Developmental Disabilities Confidentiality Act is amended by changing Sections 2 and 3 as follows:

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

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

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

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

"Confidential communication" or "communication" means any communication made by a recipient or other person to a therapist or to or in the presence of other persons during or in connection with providing mental health or developmental disability services to a recipient. Communication includes information which indicates that a person is a recipient. "Communication" does not include information that has been de-identified in accordance with HIPAA, as specified in 45 CFR

164.514.

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

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

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

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

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

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

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

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

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

"Personal notes" means:

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

other persons;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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