



Rep. Laura Fine

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LRB100 18083 HEP 38722 a

1 AMENDMENT TO HOUSE BILL 4886

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4886 by replacing  
3 everything after the enacting clause with the following:

4 "Section 1. Short title. This Act may be cited as the  
5 Access to Basic Mental Health Information Act.

6 Section 5. Definitions. As used in this Act:

7 "Mental health facility" has the meaning ascribed to that  
8 term in Section 1-114 of the Mental Health and Developmental  
9 Disabilities Code.

10 "Physician" has the meaning ascribed to that term in  
11 Section 1-120 of the Mental Health and Developmental  
12 Disabilities Code.

13 "Recipient" has the meaning ascribed to the term "recipient  
14 of services" in Section 1-123 of the Mental Health and  
15 Developmental Disabilities Code, but for purposes of this Act  
16 is limited to persons 18 years of age or older and subject to

1 involuntary admission in an inpatient facility under Articles  
2 VII and VII-A of Chapter III of the Mental Health and  
3 Developmental Disabilities Code.

4 Section 10. Access to information.

5 (a) An individual may obtain the information identified in  
6 subsection (e) regarding a recipient in a mental health  
7 facility if the requirements of subsection (b) are met and the  
8 individual provides the mental health facility with a signed  
9 written statement that: declares that the individual is  
10 directly involved in the recipient's care or in paying for the  
11 recipient's care; sets forth a description of the individual's  
12 involvement in the recipient's care or payment for such care;  
13 and declares that the individual is:

- 14 (1) the parent of a recipient;  
15 (2) the adult sibling of a recipient;  
16 (3) the adult child of a recipient;  
17 (4) the spouse of a recipient; or  
18 (5) the adult grandchild of the recipient.

19 (b) An individual listed in subsection (a) is not entitled  
20 to receive the information identified in subsection (e) from  
21 the mental health facility unless:

- 22 (1) the recipient expressly agrees to the  
23 communication as provided in Section 5 of the Mental Health  
24 and Developmental Disabilities Confidentiality Act;  
25 (2) the recipient has the means and capacity to

1       communicate; is expressly asked within 24 hours before the  
2       disclosure of information to the individual whether the  
3       recipient objects to the disclosure of the information to  
4       the individual; and the recipient affirmatively indicates  
5       that he or she has no objection to disclosure of the  
6       information to the individual; or

7               (3) the recipient is unconscious or lacks capacity due  
8       to intoxicants or temporary psychosis, and the physician at  
9       the mental health facility determines, in his or her  
10      professional judgment, that sharing the information would  
11      be in the recipient's best interest.

12      (c) If any individual or individuals are provided  
13      information by a mental health facility pursuant to paragraph  
14      (3) of subsection (b) of this Section, within a reasonable time  
15      after the recipient regains consciousness or capacity, the  
16      mental health facility, through its employees or agents, shall  
17      notify the recipient of all communications made to any  
18      individual or individuals pursuant to paragraph (3) of  
19      subsection (b) and shall identify every individual who received  
20      information pursuant to paragraph (3) of subsection (b). No  
21      further communication of information by the mental health  
22      facility to any individual after the recipient regains  
23      consciousness or capacity shall occur unless there is  
24      compliance with one of the other provisions of subsection (b).

25      (d) An individual requesting information must submit to the  
26      mental health facility proof of identification and list his or

1 her name, address, phone number, and relationship to the  
2 recipient.

3 (e) The mental health facility shall provide the following  
4 information to an individual entitled to information under  
5 subsection (a) only if:

6 (1) the mental health facility has taken reasonable  
7 steps to ascertain that release of the information to the  
8 individual will not be damaging to the recipient or  
9 contrary to the recipient's best interests, including, but  
10 not limited to, asking the recipient and the family member  
11 whether there are any adverse legal actions between them or  
12 any other reasons that the family member should not receive  
13 the information; and

14 (2) the information disclosed is directly relevant to  
15 the individual's ongoing involvement with the recipient's  
16 care or payment for the recipient's care, as identified in  
17 the written statement provided pursuant to subsection (a),  
18 and is limited to the minimum information of the following  
19 that is necessary to accomplish the intended purpose of the  
20 disclosure:

21 (A) whether the recipient is located at the mental  
22 health facility;

23 (B) current physical and mental condition;

24 (C) diagnosis;

25 (D) treatment needs;

26 (E) services provided;

1 (F) services needed, including medication, if any;  
2 (G) discharge planning or continuity of care, if  
3 applicable; and  
4 (H) if clinically appropriate, a physician's  
5 report as provided under the adult guardianship  
6 proceeding under Section 11a-9 of the Probate Act of  
7 1975 or an Inpatient Certificate or Outpatient  
8 Certificate under Article VI, VII, or VII-A of Chapter  
9 III of the Mental Health and Developmental  
10 Disabilities Code.

11 (f) Regardless of any individual's ability to receive  
12 information from the mental health facility pursuant to this  
13 Act, a mental health facility may receive tendered, relevant  
14 information, either orally or in writing, regarding a recipient  
15 from the recipient's family and friends, including, but not  
16 limited to, information about the recipient's past  
17 hospitalizations, medication, behaviors, and other information  
18 relevant to the recipient's mental health treatment.

19 (g) Whenever access to information is requested, the  
20 request, the grounds for its acceptance or denial, and any  
21 action taken thereon shall be noted in the recipient's record.  
22 The mental health facility shall also notify the recipient of  
23 any request to access information, the request, the date of the  
24 request, the grounds for its acceptance or denial, the name and  
25 contact information of the individual or individuals who made  
26 the request, and any action taken within a reasonable time of

1 the initial request.

2 (h) An individual entitled to information under this Act  
3 shall not use the information provided by the mental health  
4 facility regarding the recipient in any legal proceedings or in  
5 any other transaction to the individual's advantage or the  
6 recipient's disadvantage. The information shall be excluded  
7 from evidence in any legal proceedings unless it is being used  
8 to assert or prove that a person is subject to an involuntary  
9 admission under Articles VII and VII-A of Chapter III of the  
10 Mental Health and Developmental Disabilities Code or to prove  
11 that a person is a person with a disability in need of an adult  
12 guardianship in a proceeding under Article XIa of the Probate  
13 Act of 1975. An individual provided information by a mental  
14 health facility pursuant to the terms of this Act shall not  
15 disclose such information to any other person or entity unless  
16 the disclosure is directly related to the individual's ongoing  
17 involvement with the recipient's care or payment for the  
18 recipient's care.

19 (i) Any recipient aggrieved by the use or disclosure of  
20 information received from a mental health facility by an  
21 individual entitled to information under this Act that operates  
22 to the individual's advantage or to the recipient's  
23 disadvantage or detriment may recover for each intentional or  
24 reckless violation of subsection (h) of this Section:

25 (1) liquidated damages of \$2,000 or actual damages,  
26 whichever is greater;

1           (2) reasonable attorney's fees; and

2           (3) such other relief, including an injunction, as the  
3           court may deem appropriate.

4           (j) A mental health facility and its employees or agents  
5           are not liable for any action under this Act, including, but  
6           not limited to, the release of information to a third party in  
7           compliance with this Act, unless the release was an intentional  
8           or reckless violation of this Act.

9           (k) Nothing in this Act constitutes an infringement on an  
10          individual's right to obtain mental health records of the  
11          recipient if the individual has another right to the mental  
12          health records by law, regulation, or consent of the recipient.

13          (j) This Act supersedes Sections 2-101.1 and 2-113 of the  
14          Mental Health and Developmental Disabilities Code and any other  
15          law that would be viewed to limit the access of an individual  
16          listed in subsection (a) to the information set forth in  
17          subsection (e) only to the extent inconsistent with this Act."