



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1145

Introduced 02/07/11, by Rep. Dan Brady

SYNOPSIS AS INTRODUCED:

740 ILCS 110/10

from Ch. 91 1/2, par. 810

Amends the Mental Health and Developmental Disabilities Confidentiality Act. Provides that records and communications may be disclosed in a proceeding concerning child custody or child visitation, if and only to the extent the court finds, after in camera examination, that the records and communications are relevant to the safety or health of the child, and are admissible.

LRB097 05993 AJO 46064 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 Section 10 as follows:

7 (740 ILCS 110/10) (from Ch. 91 1/2, par. 810)

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

14 (1) Records and communications may be disclosed in a
15 civil, criminal or administrative proceeding in which the
16 recipient introduces his mental condition or any aspect of
17 his services received for such condition as an element of
18 his claim or defense, if and only to the extent the court
19 in which the proceedings have been brought, or, in the case
20 of an administrative proceeding, the court to which an
21 appeal or other action for review of an administrative
22 determination may be taken, finds, after in camera
23 examination of testimony or other evidence, that it is

1 relevant, probative, not unduly prejudicial or
2 inflammatory, and otherwise clearly admissible; that other
3 satisfactory evidence is demonstrably unsatisfactory as
4 evidence of the facts sought to be established by such
5 evidence; and that disclosure is more important to the
6 interests of substantial justice than protection from
7 injury to the therapist-recipient relationship or to the
8 recipient or other whom disclosure is likely to harm.
9 Except in a criminal proceeding in which the recipient, who
10 is accused in that proceeding, raises the defense of
11 insanity, no record or communication between a therapist
12 and a recipient shall be deemed relevant for purposes of
13 this subsection, except the fact of treatment, the cost of
14 services and the ultimate diagnosis unless the party
15 seeking disclosure of the communication clearly
16 establishes in the trial court a compelling need for its
17 production. However, for purposes of this Act, in any
18 action brought or defended under the Illinois Marriage and
19 Dissolution of Marriage Act, or in any action in which pain
20 and suffering is an element of the claim, mental condition
21 shall not be deemed to be introduced merely by making such
22 claim and shall be deemed to be introduced only if the
23 recipient or a witness on his behalf first testifies
24 concerning the record or communication.

25 (2) Records or communications may be disclosed in a
26 civil proceeding after the recipient's death when the

1 recipient's physical or mental condition has been
2 introduced as an element of a claim or defense by any party
3 claiming or defending through or as a beneficiary of the
4 recipient, provided the court finds, after in camera
5 examination of the evidence, that it is relevant,
6 probative, and otherwise clearly admissible; that other
7 satisfactory evidence is not available regarding the facts
8 sought to be established by such evidence; and that
9 disclosure is more important to the interests of
10 substantial justice than protection from any injury which
11 disclosure is likely to cause.

12 (3) In the event of a claim made or an action filed by
13 a recipient, or, following the recipient's death, by any
14 party claiming as a beneficiary of the recipient for injury
15 caused in the course of providing services to such
16 recipient, the therapist and other persons whose actions
17 are alleged to have been the cause of injury may disclose
18 pertinent records and communications to an attorney or
19 attorneys engaged to render advice about and to provide
20 representation in connection with such matter and to
21 persons working under the supervision of such attorney or
22 attorneys, and may testify as to such records or
23 communication in any administrative, judicial or discovery
24 proceeding for the purpose of preparing and presenting a
25 defense against such claim or action.

26 (4) Records and communications made to or by a

1 therapist in the course of examination ordered by a court
2 for good cause shown may, if otherwise relevant and
3 admissible, be disclosed in a civil, criminal, or
4 administrative proceeding in which the recipient is a party
5 or in appropriate pretrial proceedings, provided such
6 court has found that the recipient has been as adequately
7 and as effectively as possible informed before submitting
8 to such examination that such records and communications
9 would not be considered confidential or privileged. Such
10 records and communications shall be admissible only as to
11 issues involving the recipient's physical or mental
12 condition and only to the extent that these are germane to
13 such proceedings.

14 (5) Records and communications may be disclosed in a
15 proceeding under the Probate Act of 1975, to determine a
16 recipient's competency or need for guardianship, provided
17 that the disclosure is made only with respect to that
18 issue.

19 (6) Records and communications may be disclosed when
20 such are made during treatment which the recipient is
21 ordered to undergo to render him fit to stand trial on a
22 criminal charge, provided that the disclosure is made only
23 with respect to the issue of fitness to stand trial.

24 (7) Records and communications of the recipient may be
25 disclosed in any civil or administrative proceeding
26 involving the validity of or benefits under a life,

1 accident, health or disability insurance policy or
2 certificate, or Health Care Service Plan Contract,
3 insuring the recipient, but only if and to the extent that
4 the recipient's mental condition, or treatment or services
5 in connection therewith, is a material element of any claim
6 or defense of any party, provided that information sought
7 or disclosed shall not be redisclosed except in connection
8 with the proceeding in which disclosure is made.

9 (8) Records or communications may be disclosed when
10 such are relevant to a matter in issue in any action
11 brought under this Act and proceedings preliminary
12 thereto, provided that any information so disclosed shall
13 not be utilized for any other purpose nor be redisclosed
14 except in connection with such action or preliminary
15 proceedings.

16 (9) Records and communications of the recipient may be
17 disclosed in investigations of and trials for homicide when
18 the disclosure relates directly to the fact or immediate
19 circumstances of the homicide.

20 (10) Records and communications of a deceased
21 recipient may be disclosed to a coroner conducting a
22 preliminary investigation into the recipient's death under
23 Section 3-3013 of the Counties Code. However, records and
24 communications of the deceased recipient disclosed in an
25 investigation shall be limited solely to the deceased
26 recipient's records and communications relating to the

1 factual circumstances of the incident being investigated
2 in a mental health facility.

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

16 (12) Records and communications of a recipient may be
17 disclosed when disclosure is necessary to collect sums or
18 receive third party payment representing charges for
19 mental health or developmental disabilities services
20 provided by a therapist or agency to a recipient; however,
21 disclosure shall be limited to information needed to pursue
22 collection, and the information so disclosed may not be
23 used for any other purposes nor may it be redisclosed
24 except in connection with collection activities. Whenever
25 records are disclosed pursuant to this subdivision (12),
26 the recipient of the records shall be advised in writing

1 that any person who discloses mental health records and
2 communications in violation of this Act may be subject to
3 civil liability pursuant to Section 15 of this Act or to
4 criminal penalties pursuant to Section 16 of this Act or
5 both.

6 (13) Records and communications of a recipient may be
7 disclosed in a proceeding concerning the custody of a child
8 or visitation with a child, if and only to the extent that
9 the court in which the proceedings have been brought finds,
10 after in camera examination of testimony or other evidence,
11 that the records and communications are relevant to the
12 safety or health of the child and are admissible.

13 (b) Before a disclosure is made under subsection (a), any
14 party to the proceeding or any other interested person may
15 request an in camera review of the record or communications to
16 be disclosed. The court or agency conducting the proceeding may
17 hold an in camera review on its own motion. When, contrary to
18 the express wish of the recipient, the therapist asserts a
19 privilege on behalf and in the interest of a recipient, the
20 court may require that the therapist, in an in camera hearing,
21 establish that disclosure is not in the best interest of the
22 recipient. The court or agency may prevent disclosure or limit
23 disclosure to the extent that other admissible evidence is
24 sufficient to establish the facts in issue. The court or agency
25 may enter such orders as may be necessary in order to protect
26 the confidentiality, privacy, and safety of the recipient or of

1 other persons. Any order to disclose or to not disclose shall
2 be considered a final order for purposes of appeal and shall be
3 subject to interlocutory appeal.

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

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

1 communications only after the committee, commission or
2 subcommittee has permitted the recipient, guardian or
3 therapist to present his objection in person before it and has
4 renewed its request for disclosure by a majority vote of its
5 members.

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

10 (d) No party to any proceeding described under paragraphs
11 (1), (2), (3), (4), (7), or (8) of subsection (a) of this
12 Section, nor his or her attorney, shall serve a subpoena
13 seeking to obtain access to records or communications under
14 this Act unless the subpoena is accompanied by a written order
15 issued by a judge, authorizing the disclosure of the records or
16 the issuance of the subpoena. No such written order shall be
17 issued without written notice of the motion to the recipient
18 and the treatment provider. Prior to issuance of the order,
19 each party or other person entitled to notice shall be
20 permitted an opportunity to be heard pursuant to subsection (b)
21 of this Section. No person shall comply with a subpoena for
22 records or communications under this Act, unless the subpoena
23 is accompanied by a written order authorizing the issuance of
24 the subpoena or the disclosure of the records. Each subpoena
25 duces tecum issued by a court or administrative agency or
26 served on any person pursuant to this subsection (d) shall

1 include the following language: "No person shall comply with a
2 subpoena for mental health records or communications pursuant
3 to Section 10 of the Mental Health and Developmental
4 Disabilities Confidentiality Act, 740 ILCS 110/10, unless the
5 subpoena is accompanied by a written order that authorizes the
6 issuance of the subpoena and the disclosure of records or
7 communications."

8 (e) When a person has been transported by a peace officer
9 to a mental health facility, then upon the request of a peace
10 officer, if the person is allowed to leave the mental health
11 facility within 48 hours of arrival, excluding Saturdays,
12 Sundays, and holidays, the facility director shall notify the
13 local law enforcement authority prior to the release of the
14 person. The local law enforcement authority may re-disclose the
15 information as necessary to alert the appropriate enforcement
16 or prosecuting authority.

17 (f) A recipient's records and communications shall be
18 disclosed to the Inspector General of the Department of Human
19 Services within 10 business days of a request by the Inspector
20 General (i) in the course of an investigation authorized by the
21 Department of Human Services Act and applicable rule or (ii)
22 during the course of an assessment authorized by the Abuse of
23 Adults with Disabilities Intervention Act and applicable rule.
24 The request shall be in writing and signed by the Inspector
25 General or his or her designee. The request shall state the
26 purpose for which disclosure is sought. Any person who

1 knowingly and willfully refuses to comply with such a request
2 is guilty of a Class A misdemeanor. A recipient's records and
3 communications shall also be disclosed pursuant to subsection
4 (g-5) of Section 1-17 of the Department of Human Services Act
5 in testimony at health care worker registry hearings or
6 preliminary proceedings when such are relevant to the matter in
7 issue, provided that any information so disclosed shall not be
8 utilized for any other purpose nor be redisclosed except in
9 connection with such action or preliminary proceedings.

10 (Source: P.A. 96-406, eff. 8-13-09; 96-1399, eff. 7-29-10;
11 96-1453, eff. 8-20-10.)