WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007

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ENROLLED

House Bill No. 3184

(By Delegate Wysong)

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Passed March 10, 2007

In Effect Ninety Days from Passage
[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended; and to amend and reenact §27-5-9 of said code, all relating to confidentiality, disclosure and authorization for disclosure of mental health information obtained in the course of treatment or evaluation of individuals.

Be it enacted by the Legislature of West Virginia:

That §27-3-1 and §27-3-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §27-5-9 of said code be amended and reenacted, all to read as follows:

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

1 (a) Communications and information obtained in the course of treatment or evaluation of any client or patient are confidential information. Such confidential information includes the fact that a person is or has been a client or
patient, information transmitted by a patient or client or family thereof for purposes relating to diagnosis or treatment, information transmitted by persons participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or opinions formed regarding a client’s or patient’s physical, mental or emotional condition; any advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record or characterization of the matters hereinbefore described. It does not include information which does not identify a client or patient, information from which a person acquainted with a client or patient would not recognize such client or patient, and uncoded information from which there is no possible means to identify a client or patient.

(b) Confidential information may be disclosed:

(1) In a proceeding under section four, article five of this chapter to disclose the results of an involuntary examination made pursuant to sections two, three or four, article five of this chapter;

(2) In a proceeding under article six-a of this chapter to disclose the results of an involuntary examination made pursuant thereto;

(3) Pursuant to an order of any court based upon a finding that the information is sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining the confidentiality established by this section;

(4) To protect against a clear and substantial danger of imminent injury by a patient or client to himself, herself or another;

(5) For treatment or internal review purposes, to staff of the mental health facility where the patient is being cared for or to other health professionals involved in treatment of the patient; and

(6) Without the patient’s consent as provided for under
the Privacy Rule of the federal Health Insurance Portability and Accountability Act of 1996, 45 C. F. R. §164.506 for thirty days from the date of admission to a mental health facility if: (i) The provider makes a good faith effort to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum information necessary is released for a specifically stated purpose; and (iii) prompt notice of the disclosure, the recipient of the information and the purpose of the disclosure is given to the patient or legal representative.


No consent or authorization for the transmission or disclosure of confidential information is effective unless it is in writing and signed by the patient or client by his or her legal guardian. Every person signing an authorization shall be given a copy.

Every person requesting the authorization shall inform the patient, client or authorized representative that refusal to give the authorization will in no way jeopardize his or her right to obtain present or future treatment.

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.


(a) No person may be deprived of any civil right solely by reason of his or her receipt of services for mental illness, mental retardation or addiction, nor does the receipt of the services modify or vary any civil right of the person, including, but not limited to, civil service status and appointment, the right to register for and to vote at elections, the right to acquire and to dispose of property, the right to execute instruments or rights relating to the granting, forfeiture or denial of a license, permit, privilege or benefit pursuant to any law, but a person who has been adjudged incompetent pursuant to article eleven of this chapter and who has not been restored to legal competency may be
deprived of such rights. Involuntary commitment pursuant
to this article does not of itself relieve the patient of legal
capacity.

(b) Each patient of a mental health facility receiving
services from the facility shall receive care and treatment that
is suited to his or her needs and administered in a skillful,
safe and humane manner with full respect for his or her
dignity and personal integrity.

(c) Every patient has the following rights regardless of
adjudication of incompetency:

(1) Treatment by trained personnel;

(2) Careful and periodic psychiatric reevaluation no less
frequently than once every three months;

(3) Periodic physical examination by a physician no less
frequently than once every six months; and

(4) Treatment based on appropriate examination and
diagnosis by a staff member operating within the scope of his
or her professional license.

(d) The chief medical officer shall cause to be developed
within the clinical record of each patient a written treatment
plan based on initial medical and psychiatric examination not
later than seven days after he or she is admitted for treatment.
The treatment plan shall be updated periodically, consistent
with reevaluation of the patient. Failure to accord the patient
the requisite periodic examinations or treatment plan and
reevaluations entitles the patient to release.

(e) A clinical record shall be maintained at a mental
health facility for each patient treated by the facility. The
record shall contain information on all matters relating to the
admission, legal status, care and treatment of the patient and
shall include all pertinent documents relating to the patient.
Specifically, the record shall contain results of periodic
examinations, individualized treatment programs, evaluations
and reevaluations, orders for treatment, orders for application
for mechanical restraint and accident reports, all signed by
the personnel involved.

(f) Every patient, upon his or her admission to a hospital
and at any other reasonable time, shall be given a copy of the
rights afforded by this section.

(g) The Secretary of the Department of Health and
Human Resources shall propose rules for legislative approval
in accordance with the provisions of article three, chapter
twenty-nine-a of this code to protect the personal rights of
patients not inconsistent with this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the __th day of April, 2007.

Governor