

HB 3184 S

FILED

2007 APR -2 PM 2: 52

OFFICE WEST VIRGINIA
SECRETARY OF STATE

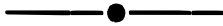
WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2007



ENROLLED

House Bill No. 3184

(By Delegate Wysong)



Passed March 10, 2007

In Effect Ninety Days from Passage

E N R O L L E D

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H. B. 3184

OFFICE WEST VIRGINIA
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(BY DELEGATE WYSONG)

[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
- 2 course of treatment or evaluation of any client or patient are
- 3 confidential information. Such confidential information
- 4 includes the fact that a person is or has been a client or

5 patient, information transmitted by a patient or client or
6 family thereof for purposes relating to diagnosis or treatment,
7 information transmitted by persons participating in the
8 accomplishment of the objectives of diagnosis or treatment,
9 all diagnoses or opinions formed regarding a client's or
10 patient's physical, mental or emotional condition; any advice,
11 instructions or prescriptions issued in the course of diagnosis
12 or treatment, and any record or characterization of the matters
13 hereinbefore described. It does not include information
14 which does not identify a client or patient, information from
15 which a person acquainted with a client or patient would not
16 recognize such client or patient, and uncoded information
17 from which there is no possible means to identify a client or
18 patient.

19 (b) Confidential information may be disclosed:

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

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

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

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

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

38 (6) Without the patient's consent as provided for under

39 the Privacy Rule of the federal Health Insurance Portability
 40 and Accountability Act of 1996, 45 C. F. R. §164.506 for
 41 thirty days from the date of admission to a mental health
 42 facility if: (i) The provider makes a good faith effort to
 43 obtain consent from the patient or legal representative prior
 44 to disclosure; (ii) the minimum information necessary is
 45 released for a specifically stated purpose; and (iii) prompt
 46 notice of the disclosure, the recipient of the information and
 47 the purpose of the disclosure is given to the patient or legal
 48 representative.

§27-3-2. Authorization of disclosure of confidential information.

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

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

ARTICLE 5. INVOLUNTARY HOSPITALIZATION.

§27-5-9. Rights of patients.

1 (a) No person may be deprived of any civil right solely
 2 by reason of his or her receipt of services for mental illness,
 3 mental retardation or addiction, nor does the receipt of the
 4 services modify or vary any civil right of the person,
 5 including, but not limited to, civil service status and
 6 appointment, the right to register for and to vote at elections,
 7 the right to acquire and to dispose of property, the right to
 8 execute instruments or rights relating to the granting,
 9 forfeiture or denial of a license, permit, privilege or benefit
 10 pursuant to any law, but a person who has been adjudged
 11 incompetent pursuant to article eleven of this chapter and
 12 who has not been restored to legal competency may be

13 deprived of such rights. Involuntary commitment pursuant
14 to this article does not of itself relieve the patient of legal
15 capacity.

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

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

23 (1) Treatment by trained personnel;

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

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

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

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

39 (e) A clinical record shall be maintained at a mental
40 health facility for each patient treated by the facility. The
41 record shall contain information on all matters relating to the
42 admission, legal status, care and treatment of the patient and
43 shall include all pertinent documents relating to the patient.
44 Specifically, the record shall contain results of periodic
45 examinations, individualized treatment programs, evaluations

46 and reevaluations, orders for treatment, orders for application
47 for mechanical restraint and accident reports, all signed by
48 the personnel involved.

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

52 (g) The Secretary of the Department of Health and
53 Human Resources shall propose rules for legislative approval
54 in accordance with the provisions of article three, chapter
55 twenty-nine-a of this code to protect the personal rights of
56 patients not inconsistent with this section.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.




Chairman Senate Committee



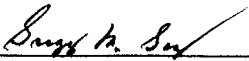
Chairman House Committee

Originating in the House.

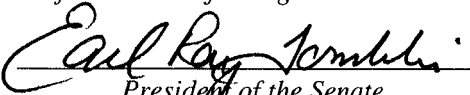
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Clerk of the Senate



Clerk of the House of Delegates

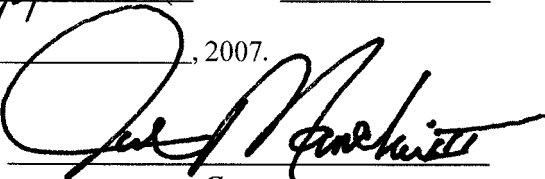


President of the Senate



Speaker of the House of Delegates

The within is appended this the 2nd
day of April, 2007.



Governor

PRESENTED TO THE
GOVERNOR

MAR 26 2007

Time

4:05 pm