

2022 -- H 7669 SUBSTITUTE A

LC005242/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND HOSPITALS -- MENTAL HEALTH LAW

Introduced By: Representatives Cassar, Kislak, McNamara, Kazarian, and Bennett

Date Introduced: March 02, 2022

Referred To: House Health & Human Services

(BHDDH)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 40.1-5-26 and 40.1-5-29 of the General Laws in Chapter 40.1-5
2 entitled "Mental Health Law" are hereby amended to read as follows:

3 **40.1-5-26. Disclosure of confidential information and records.**

4 (a) The fact of admission or certification, and all information and records compiled,
5 obtained, or maintained in the course of providing services to persons under this chapter, shall be
6 confidential. Nothing in this chapter may supersede patient information privacy guidelines
7 pertaining to mental health information outlined in the Health Insurance Portability and
8 Accountability Act of 1996 or any subsequent updates to the federal law concerning health
9 information to assure that sharing of psychotherapy notes is prohibited except when there is express
10 written approval of the patient.

11 (b) Information and records may be disclosed only:

12 (1) To any person, with the written consent of the patient, or his or her guardian.

13 (2) In communications among qualified medical or mental health professionals who have
14 responsibility for the patient's care and who have a good faith belief that the disclosure of records
15 will improve the quality of care provided to the patient. Such communications occur in the
16 provision of services ~~or~~ to make appropriate referrals for treatment, payment, or health care
17 operations, or in the course of court proceedings. ~~The consent of the patient, or his or her guardian,~~
18 ~~must be obtained before information or records may be disclosed by a professional person~~

1 ~~employed by a facility to a professional person not employed by the facility who does not have the~~
2 ~~medical responsibility for the patient's care.~~

3 (3) When the person receiving services, or his or her guardian, designates persons to whom
4 information or records may be released, or if the person is a minor, when his or her parents or
5 guardian make the designation.

6 (4) To the extent necessary for a recipient to make a claim, or for a claim to be made on
7 behalf of a recipient, for aid, insurance, or medical assistance to which he or she may be entitled.

8 (5) To proper medical authorities for the purpose of providing emergency medical
9 treatment where the person's life or health are in immediate jeopardy.

10 (6) For program evaluation and/or research, provided that the director adopts rules for the
11 conduct of the evaluations and/or research. The rules shall include, but need not be limited to, the
12 requirement that all evaluators and researchers must sign an oath of confidentiality, agreeing not to
13 divulge, publish, or otherwise make known, to unauthorized persons or the public, any information
14 obtained in the course of the evaluation or research regarding persons who have received services
15 such that the person who received the services is identifiable.

16 (7) To the courts, and persons designated by judges thereof, in accordance with applicable
17 rules of procedure. The records and files maintained in any court proceeding pursuant to this chapter
18 shall be confidential and available only to the person who was the subject of the proceeding, or his
19 or her attorney.

20 (8) To the state medical examiner in connection with the investigation of a fatality of a
21 current or former patient to the extent necessary to assist the medical examiner in determining the
22 cause of death.

23 (9) To the director of health in accordance with, and to the extent authorized by, the
24 provisions of chapter 37.3 of title 5 and all applicable federal laws and regulations; provided,
25 however, that with respect to any information obtained, the department complies with all state and
26 federal confidentiality laws, including, but not limited to, chapter 37.3 of title 5 and specifically §
27 5-37.3-4(c), and that the name, or names, of the patient, or patients, who is or are determined by
28 the director of health to be immaterial to the request, inquiry, or investigation remain unidentifiable.
29 Any treatment facility that provides information to the director of health in accord with a request
30 under this subsection is not liable for wrongful disclosure arising out of any subsequent disclosure
31 by the director of health.

32 (10) To a probate court of competent jurisdiction, petitioner, respondent, and/or their
33 attorneys, when the information is contained within a decision-making assessment tool that
34 conforms to the provisions of § 33-15-47.

1 (11) To the department of children, youth and families and/or the department's contracted
2 designee for the purpose of facilitating effective care planning pursuant to § 42-72-5.2(2) and in
3 accordance with applicable state and federal laws, for a child hospitalized for psychiatric services
4 and such services are paid for in whole or in part by the state, or for a child who may be discharged
5 from an acute-care facility to an out-of-home mental or behavioral health agency for services and
6 when such services will be paid for in whole or in part by the state.

7 (12) To the RIte Care health plans for any child enrolled in RIte Care.

8 (13) To the NICS database for firearms disqualifying information provided that only
9 individual identifying information required by § 40.1-5-8(1) is submitted.

10 (14) To any vendor, agent, contractor, or designee who operates an electronic health record,
11 health information exchange, or clinical management system to fulfill one of the purposes outlined
12 in § 40.1-5-26(b).

13 (c) Written consent must be obtained by the patient, or his or her guardian, before
14 disclosures for purposes other than those allowed in § 40.1-5.26(b) and for disclosure of
15 psychotherapy notes that are otherwise excluded from a patient's record.

16 **40.1-5-29. Record of disclosure.**

17 When any disclosure of information or records is made, the physician in charge of the
18 patient or the professional person in charge of the facility, or his or her designee, shall promptly
19 cause to be entered into the patient's medical record the date and circumstances under which the
20 disclosure was made, the names, and relationships to the patient, if any, of the person or agencies
21 to whom the disclosure was made, and the information disclosed. Disclosures occurring through
22 automated electronic exchanges such as those facilitated by electronic health records or health
23 information exchanges shall be recorded and made available to the patient by the applicable system
24 operator upon the patient's request.

25 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES AND
HOSPITALS -- MENTAL HEALTH LAW

- 1 This act would amend provisions of law relative to the disclosure of confidential healthcare
- 2 records and the disclosure thereof occurring through electronic means.
- 3 This act would take effect upon passage.

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