

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

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

Introduced By: Senators McKenney, DiMario, Cano, Euer, and Burke

Date Introduced: March 22, 2023

Referred To: Senate Health & Human Services

(Dept. of 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.

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

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

9 (2) In communications among ~~qualified~~ medical or mental health professionals ~~in~~ for the
10 provision of services, or to make appropriate referrals, ~~or in the course of court proceedings. The~~
11 ~~consent of the patient, or his or her guardian, must be obtained before information or records may~~
12 ~~be disclosed by a professional person employed by a facility to a professional person not employed~~
13 ~~by the facility who does not have the medical responsibility for the patient's care~~ for diagnosis,
14 treatment, and/or transitions of care.

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

18 (4) To the extent necessary for a recipient to make a claim, or for a claim to be made on

1 behalf of a recipient, for aid, insurance, or medical assistance to which he or she may be entitled.

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

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

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

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

17 (9) To the director of health in accordance with, and to the extent authorized by, the
18 provisions of chapter 37.3 of title 5 and all applicable federal laws and regulations; provided,
19 however, that with respect to any information obtained, the department complies with all state and
20 federal confidentiality laws, including, but not limited to, chapter 37.3 of title 5 and specifically §
21 5-37.3-4(c), and that the name, or names, of the patient, or patients, who is or are determined by
22 the director of health to be immaterial to the request, inquiry, or investigation remain unidentifiable.
23 Any treatment facility that provides information to the director of health in accord with a request
24 under this subsection is not liable for wrongful disclosure arising out of any subsequent disclosure
25 by the director of health.

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

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

1 (12) To the RItE Care health plans for any child enrolled in RItE Care.

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

4 (14) To any vendor, agent, contractor, or designee who operates an electronic health record,
5 health information exchange, or clinical management system to fulfill one of the purposes specified
6 in subsection (b) of this section.

7 (c) Written consent must be obtained from the patient, or the patient's guardian, before
8 disclosures for purposes other than those allowed in subsection (b) of this section and for disclosure
9 of psychotherapy notes that are otherwise excluded from a patient's record;

10 (d) In accordance with applicable federal and state laws, psychotherapy notes related to the
11 treatment of a patient may be disclosed without the written consent of the patient or the patient's
12 guardian in the course of court proceedings consistent with subsection (b)(7) of this section.

13 (e) The penalties pursuant to § 5-37.3-9 shall apply to any violation of the confidentiality
14 provisions of this section.

15 **40.1-5-29. Record of disclosure.**

16 (a) When any disclosure of information or records is made, the physician in charge of the
17 patient or the professional person in charge of the facility, or his or her designee, shall promptly
18 cause to be entered into the patient's medical record the date and circumstances under which the
19 disclosure was made, the names, and relationships to the patient, if any, of the person or agencies
20 to whom the disclosure was made, and the information disclosed.

21 (b) When any disclosure of information or records is made through automated electronic
22 exchanges such as those facilitated by electronic health records or health information exchanges,
23 the appropriate system operator shall promptly record the date and circumstances under which the
24 disclosure was made, the names and relationships to the patient, if any, of the person or agencies
25 to whom the disclosure was made, and the information disclosed.

26 (c) Documentation related to disclosure of information or records, including the content
27 thereof, as required under subsections (a) and/or (b) of this section, shall be made available to the
28 patient upon the patient's or the patient's guardian's request.

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

=====
LC001644
=====

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 information and records and the disclosure thereof occurring through electronic means.
- 3 This act would take effect upon passage.

=====
LC001644
=====