WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

House Bill 4583

BY DELEGATES SHOTT AND HANSHAW

[Introduced February 13, 2018; Referred

to the Committee on the Judiciary.]

1 A BILL to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating

2   generally to the disclosure of certain confidential information; eliminating a disclosure

3   exception for treatment or internal review purposes; eliminating a provision regarding

4   disclosure from 30 days from the date of admission to a mental health facility if certain

5   conditions are met; adopting provisions of federal law which pertain to disclosure of

6   protected health information; providing for disclosure upon execution of a duly executed

7   release in compliance with the Health Insurance Portability and Accountability Act of 1996;

8   providing for disclosure in a proceeding instituted by the filing of a petition by certain

9   persons for access to persons in a guardianship; and providing for disclosure of certain

10   information by a guardian to relatives who have been granted access to a protected

11   person.

Be it enacted by the Legislature of West Virginia:

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

2 any client or patient is confidential information. Such confidential information includes the fact that

3 a person is or has been a client or patient, information transmitted by a patient or client or family

4 thereof for purposes relating to diagnosis or treatment, information transmitted by persons

5 participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or

6 opinions formed regarding a client's or patient's physical, mental or emotional condition, any

7 advice, instructions or prescriptions issued in the course of diagnosis or treatment, and any record

8 or characterization of the matters hereinbefore described. It does not include information which

9 does not identify a client or patient, information from which a person acquainted with a client or

10 patient would not recognize such client or patient and uncoded information from which there is no

11 possible means to identify a client or patient.

12 (b) Confidential information may not be disclosed, except:

13   (1) In a proceeding under §27-5-4 of this code to disclose the results of an involuntary

14   examination made pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

15   (2) In a proceeding under §27-6A-1 *et seg.* of this code to disclose the results of an

16   involuntary examination made pursuant thereto;

17   (3) Pursuant to an order of any court based upon a finding that the information is

18   sufficiently relevant to a proceeding before the court to outweigh the importance of maintaining

19   the confidentiality established by this section;

20   (4) To provide notice to the federal National Instant Criminal Background Check System,

21   established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act,

22   18 U. S. C. § 922, in accordance with §61-7A-1 *et seg.* of this code;

23   (5) To protect against a clear and substantial danger of imminent injury by a patient or

24   client to himself, herself or another;

25   (6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance

26   Portability and Accountability Act of 1996 in 45 CFR §164.506;

27   (7) Pursuant to and as provided for under the federal privacy rule of the Health Insurance

28   Portability and Accountability Act of 1996 in 45 CFR §164.512: *Provided,* That disclosures made

29   pursuant to 45 CFR §164.512(e) comply with subdivision (3) of this subsection.

30   (8) Upon execution of a duly executed release in compliance with the Health Insurance

31   Portability and Accountability Act of 1996.

32   (9) In a proceeding held under §44A-3-17 of this code, or as required by §44A-3-18 of this

33   code.

NOTE: The purpose of this bill is to harmonize a potential code conflict regarding the disclosure of confidential information.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.

This section has been rewritten; therefore it has been completely underscored.