

STATE OF WEST VIRGINIA
OFFICE OF THE GOVERNOR
CHARLESTON

April 1, 2010

The Honorable Natalie E. Tennant
Secretary of State
State Capitol
Charleston, West Virginia

Dear Secretary Tennant:

Pursuant to the provisions of Section 14, Article VII of the Constitution of West Virginia, I hereby disapprove Enrolled Senate Bill No. 122.

Enrolled Senate Bill No. 122 amends section one, article four, chapter twenty-seven of the West Virginia Code, which relates to the authority of a mental health facility to receive voluntary patients. The bill would amend the Code to permit the voluntary hospitalization of a minor without the minor's consent. Also, the bill would require the release of a minor patient's drug addiction and treatment records without the minor's consent.

This amendment, permitting the unauthorized release of a minor's drug addiction and treatment records, is in direct conflict with federal law that prohibits the release of such records without the written consent of the minor. See C.F.R. §2.14 (providing that where a minor acting alone has the legal capacity under applicable law to apply for and obtain alcohol or drug abuse treatment, any

written consent for the disclosure of records may be given only by the minor patient); *see also* W. Va. Code §60A-5-504(e) (providing that a minor may obtain treatment for alcohol addiction without the knowledge or consent of a parent or guardian); and W. Va. Code §60-6-23 (providing that a minor may obtain treatment for drug addiction without the knowledge or consent of a parent or guardian). Moreover, state law may not authorize or compel any disclosure of drug or alcohol treatment records that is otherwise prohibited under federal law. *See* 42 C.F.R. §2.20.

Therefore, if approved, this bill would subject mental health facilities to conflicting responsibilities and possible criminal penalties. *See* 42 C.F.R. §2.4 (requiring the assessment of criminal fines against any person who violates the prohibition against the unauthorized disclosure of drug or alcohol treatment records).

Although I support the intent of this legislation, I must veto Enrolled Senate Bill No. 122 for the reasons outlined above. However, I encourage the Department of Health and Human Resources to work with the bill's sponsors to address the problems with this legislation so that it may be reconsidered by the Legislature at a later time.

Very truly yours,

Joe Manchin III,

Governor.

cc: The Honorable Earl Ray Tomblin

The Honorable Richard Thompson