

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2674

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[Introduced February 22, 2017; 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, and to
2 amend the said Code, by adding thereto two new sections, designated §44A-3-17 and
3 §44A-3-18, all relating to the disclosure of certain confidential information relating to
4 persons in guardianship; access to and receipt of certain information regarding a protected
5 person by certain relatives of the protected person; authorizing relatives of a protected
6 person to petition the circuit court for access and information about a protected person;
7 defining “relative”; providing a relative may petition the court for an order granting access
8 to a protected person; setting forth time standards in which to conduct a hearing after a
9 petition is filed; providing for an emergency hearing under particular circumstances;
10 providing for service of a petition upon a guardian and setting time standards for service
11 thereof; providing for the entry of an order by the court following notice and hearing
12 conducted thereon; providing standards for a court to observe and implement in issuing a
13 ruling on a petition; providing the court may award attorney’s fees and costs be paid to a
14 prevailing party; setting forth particular duties for a guardian to provide relatives notice
15 about a protected person’s condition and circumstances; authorizing court to retain
16 jurisdiction; regarding dissemination of information about a protected person to relatives;
17 and providing a guardian method whereby one may be relieved of responsibility for
18 providing information regarding a protected person to a relative.

Be it enacted by the Legislature of West Virginia:

1 That §27-3-1 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; and that the said Code be amended by adding thereto two new sections, designated
3 §44A-3-17 and §44A-3-18, all to read as follows:

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 3. CONFIDENTIALITY.

§27-3-1. Definition of confidential information; disclosure.

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

15 (b) Confidential information shall not be disclosed, except:

16 (1) In a proceeding under section four, article five of this chapter to disclose the results of
17 an involuntary examination made pursuant to section two, three or four of said article;

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

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

23 (4) To provide notice to the federal National Instant Criminal Background Check System,
24 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C.
25 §922, in accordance with article seven-a, chapter sixty-one of this code;

26 (5) To protect against a clear and substantial danger of imminent injury by a patient or
27 client to himself, herself or another;

28 (6) For treatment or internal review purposes, to staff of the mental health facility where

29 the patient is being cared for or to other health professionals involved in treatment of the patient;
30 and

31 (7) Without the patient's consent as provided for under the Privacy Rule of the federal
32 Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days
33 from the date of admission to a mental health facility if: (i) The provider makes a good faith effort
34 to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum
35 information necessary is released for a specifically stated purpose; and (iii) prompt notice of the
36 disclosure, the recipient of the information and the purpose of the disclosure is given to the patient
37 or legal representative; and

38 (8) in a proceeding held under section seventeen, or as required by section eighteen, of
39 article three of chapter forty-four-A of this code.

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CHAPTER 44A. WEST VIRGINIA GUARDIANSHIP AND CONSERVATORSHIP ACT.

ARTICLE 3. GUARDIANSHIP AND CONSERVATORSHIP ADMINISTRATION.

§44A-3-17. Petition by certain persons for access to persons in guardianship; hearing and court order.

1 (a) As used in this section, unless the context otherwise requires, "relative" means a
2 spouse, parent, grandparent, stepparent, child, grandchild, sibling or half sibling. The term
3 includes said relationships that are created as a result of adoption.

4 (b) A relative may file a petition in circuit court seeking access to and information about a
5 protected person which may include the opportunity to have visitation and contact with the
6 protected person. The petition may be filed in the circuit court of the county in which the protected
7 person resides or if the protected person has been admitted to a health care facility in a county

8 other than that in which he or she resides in the circuit court of the county in which the health care
9 facility is located.

10 (c) The court shall schedule a hearing on the petition within sixty days of the petition being
11 filed: *Provided*, That if the petition alleges that the protected person's health is in recent significant
12 decline or he or she is at imminent risk of death, an emergency hearing shall be scheduled as
13 soon as practicable. The court may continue a hearing for good cause shown.

14 (d) Service of process upon the guardian shall be by personal service, consistent with the
15 West Virginia Rules of Civil Procedure. Service of the petition shall be effected at least ten days
16 prior to the scheduled hearing date: *Provided*, That where an emergency hearing is sought
17 pursuant to subsection (c) of this section, service of process upon the guardian shall be as far in
18 advance of the scheduled hearing date as possible.

19 (e) Upon notice and hearing the court may:

20 (1) Deny the petition;

21 (2) Order the guardian to allow the petitioner access to the protected person upon finding,
22 by a preponderance of the evidence, that the guardian is preventing access by the petitioner to
23 the protected person, and that contact with the petitioner is in the best interests of the protected
24 person.

25 (f) The court may, in its discretion, order the disclosure to the petitioner of such confidential
26 information, as delineated in section one of article three of chapter twenty-seven of this code, as
27 it may deem appropriate.

28 (g) The court may, in its discretion, award the prevailing party in an action brought under
29 this section court costs and reasonable attorney's fees. Court costs and attorney's fees awarded
30 under this subsection may not be paid from the protected person's estate, unless the court orders
31 otherwise.

32 (h) If the court grants the petition it may, in its discretion, retain jurisdiction over the matter
33 and modify its order consistent with the best interests of the protected person.

34 (i) The provisions of this section apply to all guardianship of protected persons regardless
35 of the date guardianship was established.

§44A-3-18. Guardian's duty to Inform certain relatives about protected person's health and residence.

1 (a) The provisions of this section apply to relatives who have been granted access to a
2 protected person under section seventeen of this article.

3 (b) Except as provided by subsection (d) of this section, the guardian of a protected person
4 shall as soon as practicable inform such relatives if:

5 (1) The protected person dies;

6 (2) The protected person is admitted to a medical facility for a period of three days or more;

7 (3) The protected person's residence has changed; or

8 (4) The protected person is staying at a location other than his or her usual place of
9 residence for a period that exceeds two calendar weeks.

10 (c) In the case of the death of the protected person, the guardian shall inform the relative
11 of any funeral arrangements and the location of the protected person's final resting place.

12 (d) A relative entitled to receive information regarding a protected person under this
13 section may waive the notice required thereof by this section by providing a written waiver to the
14 guardian. A guardian shall file any such written waiver with the court.

NOTE: The purpose of this bill is to provide access to and receipt of certain information regarding protected persons by certain relatives of the protected person.

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