

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 187**

BY SENATORS TAKUBO, FACEMIRE, JEFFRIES AND

WOELFEL

[Originating in the Committee on the Judiciary;

reported on March 11, 2017]



1 A BILL to amend and reenact §27-3-1 of the Code of West Virginia, 1931, as amended, relating  
2 generally to confidentiality of medical records for patients' physical, mental or emotional  
3 conditions; eliminating disclosure exception for treatment or internal review purposes;  
4 eliminating 30-day requirement; eliminating requirement that provider make good faith  
5 effort to obtain consent from the patient or legal representative; eliminating requirement  
6 that the minimum information necessary is released for a specifically stated purpose;  
7 eliminating requirement that prompt notice of the disclosure, the recipient of the  
8 information and the purpose of the disclosure is given to the patient or legal representative;  
9 and adopting provisions of federal law which pertain to disclosure of protected health  
10 information.

*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 reenacted  
2 to read as follows:

**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 are confidential information. Such confidential information includes the fact  
3 that a person is or has been a client or patient, information transmitted by a patient or client or  
4 family 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 shall not be disclosed, except:

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

15 (2) In a proceeding under article six-a of this chapter 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, 18 U. S.  
22 C. §922, in accordance with article seven-a, chapter sixty-one 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) For treatment or internal review purposes, to staff of the mental health facility where  
26 the patient is being cared for or to other health professionals involved in treatment of the patient;  
27 and~~

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

35 (6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance  
36 Portability and Accountability Act of 1996 in 45 CFR §164.506; and

37           (7) Pursuant to and as provided for under the federal privacy rule of the Health Insurance  
38 Portability and Accountability Act of 1996 in 45 CFR §164.512: *Provided*, That disclosures made  
39 pursuant to 45 CFR §164.512(e) comply with subdivision (3) of this subsection.