

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 543

BY SENATORS TRUMP AND CLINE

[Introduced February 14, 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 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
 9 representative; providing an exception for guardianship proceedings and for family
 10 members of a person subject to guardianship members; providing for disclosure of records
 11 through a written release and authorization; and adopting provisions of federal law which
 12 pertain to disclosure of protected health information.

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 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 un-coded information from which there is
 11 no possible means to identify a client or patient.

- 12 (b) Confidential information shall 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 seq. 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 seq. 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) In a proceeding held under §44A-3-17 of this code or as required by §44A-3-18 of this
- 26 code;
- 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 §164.506;
- 29 (8) Pursuant to and as provided for under the federal privacy rule of the Health Insurance
- 30 Portability and Accountability Act of 1996 in 45 CFR §164.512: *Provided*, That disclosures made
- 31 pursuant to 45 CFR §164.512(e) comply with subdivision (3) of this subsection; or
- 32 (9) Upon execution of a duly executed release in compliance with the Health Insurance
- 33 Portability and Accountability Act of 1996.

NOTE: The purpose of this bill is to consolidate amendments made to this section of the West Virginia Code by two separate bills during the 2017 Regular Session of the Legislature. This section provides for the confidentiality of medical records relating to mental health matters and lists several legally-justified exceptions to the confidentiality provisions. In 2017 the Legislature added two provisions to comply with federal privacy

rules and also authorized disclosure of confidential information in certain circumstances relating to the guardianship of a protected person. This bill combines all of those enactments and adds an express provision to permit disclosure of confidential information if there has been a written release of confidentially issued by a legally-authorized person.

This bill rewrites previous versions of this section and, therefore, the text has been completely underscored to indicate that this text replaces the prior versions.