

# **WEST VIRGINIA LEGISLATURE**

**2018 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 543**

BY SENATORS TRUMP AND CLINE

[Originating in the Committee on the Judiciary;

Reported on February 19, 2018]



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 certain medical records; eliminating disclosure exception for  
3 treatment or internal review purposes; eliminating 30-day requirement; eliminating  
4 requirement that provider make good faith effort to obtain consent from the patient or legal  
5 representative; eliminating requirement that the minimum information necessary is  
6 released for a specifically stated purpose; eliminating requirement that prompt notice of  
7 the disclosure, the recipient of the information, and the purpose of the disclosure is given  
8 to the patient or legal representative; and adopting provisions of federal law which pertain  
9 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 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.C.~~  
22 ~~§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 ~~(7) Without the patient's consent as provided for under the Privacy Rule of the federal~~  
28 ~~Health Insurance Portability and Accountability Act of 1996, 45 C.F.R. §164.506, for thirty days~~  
29 ~~from the date of admission to a mental health facility if: (i) The provider makes a good faith effort~~  
30 ~~to obtain consent from the patient or legal representative prior to disclosure; (ii) the minimum~~  
31 ~~information necessary is released for a specifically stated purpose; and (iii) prompt notice of the~~  
32 ~~disclosure, the recipient of the information and the purpose of the disclosure is given to the patient~~  
33 ~~or legal representative; and~~

34 ~~(8) In a proceeding held under section seventeen, or as required by section eighteen, of~~  
35 ~~article three of chapter forty-four-A of this code.~~

36 (a) Communications and information obtained in the course of treatment or evaluation of  
37 any client or patient are confidential information. Such confidential information includes the fact  
38 that a person is or has been a client or patient, information transmitted by a patient or client or  
39 family thereof for purposes relating to diagnosis or treatment, information transmitted by persons  
40 participating in the accomplishment of the objectives of diagnosis or treatment, all diagnoses or

41 opinions formed regarding a client's or patient's physical, mental, or emotional condition, any  
42 advice, instructions, or prescriptions issued in the course of diagnosis or treatment, and any  
43 record or characterization of the matters hereinbefore described. It does not include information  
44 which does not identify a client or patient, information from which a person acquainted with a  
45 client or patient would not recognize such client or patient, and de-identified information from  
46 which there is no possible means to identify a client or patient.

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

48 (1) In a proceeding under §27-5-4 of this code to disclose the results of an involuntary  
49 examination made pursuant to §27-5-2, §27-5-3, or §27-5-4 of this code;

50 (2) In a proceeding under §27-6A-1 et seq. of this code to disclose the results of an  
51 involuntary examination made pursuant thereto;

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

55 (4) To provide notice to the federal National Instant Criminal Background Check System,  
56 established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act,  
57 18 U.S.C. § 922, in accordance with §61-7A-1 et seq. of this code;

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

60 (6) Pursuant to and as provided for under the federal privacy rule of the Health Insurance  
61 Portability and Accountability Act of 1996 in 45 CFR §164, as amended under the Health  
62 Information Technology for Economic and Clinical Health Act of the American and the Omnibus  
63 Final Rule, 78 FR 5566; or

64 (7) In a proceeding held under §44A-3-17 of this code or as required by §44A-3-18 of this  
65 code.