

**MENTAL HEALTH TREATMENT - CONSENT TO TREATMENT, RELEASE OF
MEDICAL RECORDS AND REQUIRING REPORT BY LEGISLATIVE BUDGET AND
FINANCE COMMITTEE**

Act of Nov. 23, 2004, P.L. 1149, No. 147

Cl. 35

Session of 2004

No. 2004-147

SB 137

AN ACT

Amending the act of February 13, 1970 (P.L.19, No.10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances," further providing for consent to treatment; providing for release of medical records; and requiring a report by the Legislative Budget and Finance Committee.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. The act of February 13, 1970 (P.L.19, No.10), entitled "An act enabling certain minors to consent to medical, dental and health services, declaring consent unnecessary under certain circumstances," is amended by adding sections to read:

Section 1.1 . Mental Health Treatment.--(a) The following shall apply to consent for outpatient treatment:

(1) Any minor who is fourteen years of age or older may consent on his or her own behalf to outpatient mental health examination and treatment, and the minor's parent or legal guardian's consent shall not be necessary.

(2) A parent or legal guardian of a minor less than eighteen years of age may consent to voluntary outpatient mental health examination or treatment on behalf of the minor, and the minor's consent shall not be necessary.

(3) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or legal guardian abrogate consent given by the minor on his or her own behalf.

(b) The following shall apply to consent for inpatient treatment:

(1) A minor's parent or legal guardian may consent to voluntary inpatient treatment pursuant to Article II of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," on behalf of a minor less than eighteen years of age on the recommendation of a physician who has examined the minor. The minor's consent shall not be necessary.

(2) Nothing in this section shall be construed as restricting or altering a minor's existing rights, including, but not limited to, those enumerated under the "Mental Health Procedures Act" to consent to voluntary inpatient mental health treatment on his or her own behalf at fourteen years of age or older.

(3) Nothing in this section shall be construed as restricting or altering a parent or legal guardian's existing rights to object to a minor's voluntary treatment provided pursuant to the minor's consent on his or her own behalf.

(4) A minor may not abrogate consent provided by a parent or legal guardian on the minor's behalf, nor may a parent or

legal guardian abrogate consent given by the minor on his or her own behalf.

(5) A parent or legal guardian who has provided consent to inpatient treatment under paragraph (1) may revoke that consent, which revocation shall be effective unless the minor who is fourteen to eighteen years of age has provided consent for continued inpatient treatment.

(6) A minor who is fourteen to eighteen years of age who has provided consent to inpatient treatment may revoke that consent, which revocation shall be effective unless the parent or legal guardian to the minor has provided for continued treatment under paragraph (1).

(7) At the time of admission, the director of the admitting facility or his designee shall provide the minor with an explanation of the nature of the mental health treatment in which he may be involved together with a statement of his rights, including the right to object to treatment by filing a petition with the court. If the minor wishes to exercise this right, the director of the facility or his designee shall provide a form for the minor to provide notice of the request for modification or withdrawal from treatment. The director of the facility or his designee shall file the signed petition with the court.

(8) Any minor fourteen years of age or older and under eighteen years of age who has been confined for inpatient treatment on the consent of a parent or legal guardian and who objects to continued inpatient treatment may file a petition in the court of common pleas requesting a withdrawal from or modification of treatment. The court shall promptly appoint an attorney for such minor person and schedule a hearing to be held within seventy-two hours following the filing of the petition, unless continued upon the request of the attorney for the minor, by a judge or mental health review officer who shall determine whether or not the voluntary mental health treatment is in the best interest of the minor. For inpatient treatment to continue against the minor's wishes, the court must find all of the following by clear and convincing evidence:

- (i) that the minor has a diagnosed mental disorder;
- (ii) that the disorder is treatable;
- (iii) that the disorder can be treated in the particular facility where the treatment is taking place; and
- (iv) that the proposed inpatient treatment setting represents the least restrictive alternative that is medically appropriate.

(9) A minor ordered to undergo treatment due to a determination under paragraph (8) shall remain and receive inpatient treatment at the treatment setting designated by the court for a period of up to twenty days. The minor shall be discharged whenever the attending physician determines that the minor no longer is in need of treatment, consent to treatment has been revoked under paragraph (5) or at the end of the time period of the order, whichever occurs first. If the attending physician determines continued inpatient treatment will be necessary at the end of the time period of the order and the minor does not consent to continued inpatient treatment prior to the end of the time period of the order, the court shall conduct a review hearing in accordance with this subsection to determine whether to:

- (i) release the minor; or
- (ii) make a subsequent order for inpatient mental health treatment for a period not to exceed sixty days subject to discharge of the minor whenever the attending physician

determines that the minor no longer is in need of treatment, or if consent has been revoked under paragraph (5).

(10) The procedure for a sixty-day period of treatment under paragraph (9)(ii) shall be repeated until the court determines to release the minor or the minor is discharged in accordance with paragraph (9).

(11) Nothing in this subsection shall prevent a nonconsenting parent who has legal custody rights of a minor child to object to the consent given by the other parent to inpatient treatment under paragraph (1) by filing a petition in a court of common pleas in the county where the child resides. The court shall hold a hearing on the objection within seventy-two hours of the filing of the petition.

(c) Nothing in subsections (a) and (b) is intended to restrict the rights of a minor who satisfies the conditions of section 1.

(d) As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Court of common pleas" means the court of common pleas in the county where the subject of the proceeding is being treated.

"Facility" means any mental health establishment, hospital, clinic, institution, center, day-care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons.

"Inpatient treatment" means all mental health treatment that requires full-time or part-time residence in a facility that provides mental health treatment.

"Mental health treatment" means a course of treatment, including evaluation, diagnosis, therapy and rehabilitation, designed and administered to alleviate an individual's pain and distress and to maximize the probability of recovery from mental illness. The term also includes care and other services which supplement treatment and aid or promote recovery.

Section 1.2. Release of Medical Records.--(a) When a parent or legal guardian has consented to treatment of a minor fourteen years of age or older under section 1.1(a)(2) or (b)(1), the following shall apply to release of the minor's medical records and information:

(1) The parent or legal guardian may consent to release of the minor's medical records and information, including records of prior mental health treatment for which the parent or legal guardian had provided consent, to the minor's current mental health treatment provider.

(2) If deemed pertinent by the minor's current mental health treatment provider, the release of information under this subsection may include a minor's mental health records and information from prior mental health treatment for which the minor had provided consent to treatment.

(3) The parent or legal guardian may consent to the release of the minor's mental health records and information to the primary care provider if, in the judgment of the minor's current mental health treatment provider, such release would not be detrimental to the minor.

(b) Release of mental health records and information under subsection (a) shall be limited to release directly from one provider of mental health treatment to another or from the provider of mental health treatment to the primary care provider.

(c) The parent or legal guardian who is providing consent to mental health treatment of a minor fourteen years of age or older under section 1.1(a)(2) or (b)(1) shall have the right

to information necessary for providing consent to the minor's mental health treatment, including symptoms and conditions to be treated, medications and other treatments to be provided, risks and benefits and expected results.

(d) Except to the extent set forth in subsection (a), (b) or (c), the minor shall control the release of the minor's mental health treatment records and information to the extent allowed by law. When a minor has provided consent to outpatient mental health treatment under section 1.1(a)(1), subject to subsection (a)(2), the minor shall control the records of treatment to the same extent as the minor would control the records of inpatient care or involuntary outpatient care under the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," and its regulations.

(e) Consent to release of mental health records for all purposes and in all circumstances other than those provided for in this section shall be subject to the provisions of the "Mental Health Procedures Act" and other applicable Federal and State statutes and regulations.

Section 2. No later than 12 months from the effective date of this act, the Legislative Budget and Finance Committee shall prepare a report on the mental health system for children and youth in this Commonwealth. The report shall evaluate the continuum of mental health services for children and their families and include a review of the availability of community-based outpatient and inpatient mental health services across this Commonwealth; statistical information on the number of children needing mental health services; a survey of the number of petitions filed under section 1.1(b)(7) and (8) of the act, including an assessment of those petitions resulting in treatment or continued treatment and the ordered treatment period; the timeliness and extent of services; costs for various types of mental health services for children and youth; the extent to which public and private health insurance, including medical assistance, provides coverage for different mental health treatment and services; gaps in mental health services for children and youth; and the impact and effectiveness of this act in respect to providing mental health treatment for children and youth. The Legislative Budget and Finance Committee shall report its findings and recommendations to the Judiciary Committee and the Public Health and Welfare Committee of the Senate and to the Judiciary Committee and the Health and Human Services Committee of the House of Representatives.

Section 3. This act shall take effect in 60 days.

APPROVED--The 23rd day of November, A. D. 2004.

EDWARD G. RENDELL