

ASSEMBLY BILL NO. 123—ASSEMBLYWOMAN PARNELL

FEBRUARY 15, 2007

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the voluntary admission of a person to a mental health facility. (BDR 39-93)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to mental health; requiring public and private mental health facilities to determine whether a person is competent to admit himself voluntarily to such a facility; setting forth the actions a facility must take if a person is determined not to be competent to admit himself voluntarily; providing for the release of certain clinical records; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides for the voluntary, emergency and involuntary court-ordered admissions to mental health facilities in this State. (NRS 433A.115-433A.330) The requirements for the admission of a person as a voluntary client at a private mental health facility are not specified, but a facility of the Division of Mental Health and Developmental Services of the Department of Health and Human Services is required to admit a person as a voluntary client if an examination of the person reveals that the person needs and may benefit from the services offered by the facility. (NRS 433A.140)

Section 1 of this bill provides that if a person who has attained the age of majority applies to a public or private mental health facility for admission as a voluntary client, qualified personnel of the facility must determine whether the person is competent to provide express and informed consent for his voluntary admission. If the facility determines that the person is not competent to provide such consent, the facility must refuse the person admission as a voluntary client and must commence proceedings for an emergency admission or an involuntary court-ordered admission or provide for the transfer of the person in accordance with law to another medical facility. If the facility does not admit the person as a voluntary



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client but takes other action for admission or transfer, the facility must provide written notice of that action within 48 hours to the person's spouse, relatives, legal guardian or another individual designated by the person to receive such information.

Under existing law, each facility offering mental health services is required to maintain a clinical record for a client and no part of the clinical record may be released except under certain circumstances. (NRS 433A.360) **Section 2** of this bill provides that a person's clinical record must be released to the extent necessary for a public or private mental health facility to comply with the requirements contained in **section 1** of this bill.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 433A.140 is hereby amended to read as follows:

433A.140 1. Any person may apply to:

(a) A public or private mental health facility in the State of Nevada for admission to the facility; or

(b) A division facility to receive care, treatment or training provided by the Division,

↳ as a voluntary client for the purposes of observation, diagnosis, care and treatment. In the case of a person who has not attained the age of majority, application for voluntary admission or care, treatment or training may be made on his behalf by his spouse, parent or legal guardian.

2. If the application is for admission to a division facility, or for care, treatment or training provided by the Division, the applicant must be admitted or provided such services as a voluntary client if **and** :

(a) The applicant is competent, as determined pursuant to subsection 3; and

(b) An examination by personnel of the facility qualified to make such a determination reveals that the person needs and may benefit from services offered by the mental health facility.

3. If a person who has attained the age of majority applies for admission to a public or private mental health facility as a voluntary client, the administrative officer or medical director of the facility, or his designee, shall ensure that before the person is admitted to the facility as a voluntary client, the person is evaluated to determine whether he is competent to provide express and informed consent for his voluntary admission by personnel of the facility qualified to make such a determination.

4. If a determination made pursuant to subsection 3 indicates that a person is not competent to provide express and informed consent for his voluntary admission to the public or private mental



1 *health facility, the facility shall refuse to admit the person as a*
2 *voluntary client and shall:*

3 *(a) Change the status of the person to an emergency admission*
4 *or otherwise admit the person pursuant to the procedures for*
5 *emergency admission set forth in NRS 433A.145 to 433A.190,*
6 *inclusive;*

7 *(b) Commence proceedings to admit the person pursuant to an*
8 *involuntary court-ordered admission as described in NRS*
9 *433A.200 to 433A.330, inclusive; or*

10 *(c) Take such other reasonable steps as are allowed by law to*
11 *transfer and have the person admitted to another medical facility*
12 *that is able to provide appropriate medical attention to the person.*

13 *5. Unless earlier notice is required pursuant to NRS*
14 *433A.190 or other applicable law, within 48 hours after a public*
15 *or private mental health facility takes action pursuant to*
16 *subsection 4, the administrative officer or medical director of the*
17 *facility, or his designee, shall, in accordance with any federal*
18 *regulations adopted pursuant to the Health Insurance Portability*
19 *and Accountability Act of 1996, Public Law 104-191, ensure that*
20 *written notice of the action is sent by certified mail, return receipt*
21 *requested, to:*

22 *(a) The spouse of the person;*

23 *(b) A family member, other relative or close personal friend of*
24 *the person;*

25 *(c) Another individual that the person has designated to*
26 *receive such information; or*

27 *(d) The legal guardian of the person, if the person has been*
28 *adjudicated mentally incompetent.*

29 *6. Any person admitted to a public or private mental health*
30 *facility as a voluntary client must be released immediately after the*
31 *filing of a written request for release with the responsible physician*
32 *or his designee within the normal working day, unless, within 24*
33 *hours after the request, the facility changes the status of the person*
34 *to an emergency admission pursuant to NRS 433A.145. When a*
35 *person is released pursuant to this subsection, the facility and its*
36 *agents and employees are not liable for any debts or contractual*
37 *obligations, medical or otherwise, incurred or damages caused by*
38 *the actions of the person.*

39 ~~14~~ 7. *Any person admitted to a public or private mental health*
40 *facility as a voluntary client who has not requested release may*
41 *nonetheless be released by the medical director of the facility when*
42 *examining personnel at the facility determine that the client has*
43 *recovered or has improved to such an extent that he is not*
44 *considered a danger to himself or others and that the services of that*
45 *facility are no longer beneficial to him or advisable.*



~~15.1~~ 8. A person who requests care, treatment or training from the Division pursuant to this section must be evaluated by the personnel of the Division to determine whether he is eligible for the services offered by the Division. The evaluation must be conducted:

(a) Within 72 hours if the person has requested inpatient services; or

(b) Within 72 regular operating hours, excluding weekends and holidays, if the person has requested community-based or outpatient services.

~~16.1~~ 9. This section does not preclude a public facility from making decisions, policies, procedures and practices within the limits of the money made available to the facility.

10. As used in this section, a person is "competent to provide express and informed consent" if he:

(a) Has attained the age of majority;

(b) Has not been adjudicated mentally incompetent;

(c) Is not an incapacitated person as that term is defined in NRS 132.175; and

(d) Is able to consent voluntarily in writing with sufficient knowledge and comprehension of the subject matter to make a knowing decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

Sec. 2. NRS 433A.360 is hereby amended to read as follows:

433A.360 1. A clinical record for each client must be diligently maintained by any division facility or private institution or facility offering mental health services. The record must include information pertaining to the client's admission, legal status, treatment and individualized plan for habilitation. The clinical record is not a public record and no part of it may be released, except:

(a) The record must be released to physicians, attorneys and social agencies as specifically authorized in writing by the client, his parent, guardian or attorney.

(b) The record must be released to persons authorized by the order of a court of competent jurisdiction.

(c) The record or any part thereof may be disclosed to a qualified member of the staff of a division facility, an employee of the Division or a member of the staff of an agency in Nevada which has been established pursuant to the Developmental Disabilities Assistance and Bill of Rights Act ~~11~~ of 2000, 42 U.S.C. §§ ~~16041~~ 15001 et seq., or the Protection and Advocacy for Mentally Ill Individuals Act of 1986, 42 U.S.C. §§ 10801 et seq., when the Administrator deems it necessary for the proper care of the client.



(d) Information from the clinical records may be used for statistical and evaluative purposes if the information is abstracted in such a way as to protect the identity of individual clients.

(e) To the extent necessary for a client to make a claim, or for a claim to be made on behalf of a client for aid, insurance or medical assistance to which he may be entitled, information from the records may be released with the written authorization of the client or his guardian.

(f) The record must be released without charge to any member of the staff of an agency in Nevada which has been established pursuant to 42 U.S.C. §§ ~~16041~~ 15001 et seq. or 42 U.S.C. §§ 10801 et seq. if:

(1) The client is a client of that office and he or his legal representative or guardian authorizes the release of the record; or

(2) A complaint regarding a client was received by the office or there is probable cause to believe that the client has been abused or neglected and the client:

(I) Is unable to authorize the release of the record because of his mental or physical condition; and

(II) Does not have a guardian or other legal representative or is a ward of the State.

(g) The record must be released as provided in NRS 433.332 or 433B.200 and in chapter 629 of NRS.

(h) The record must be released to the extent necessary for compliance with the provisions of NRS 433A.140.

2. As used in this section, "client" includes any person who seeks, on his own or others' initiative, and can benefit from, care, treatment and training in a private institution or facility offering mental health services, or from treatment to competency in a private institution or facility offering mental health services.

