

SENATE BILL NO. 531—COMMITTEE ON
HUMAN RESOURCES AND EDUCATION

(ON BEHALF OF THE LEGISLATIVE COMMITTEE
ON PERSONS WITH DISABILITIES)

MARCH 26, 2007

Referred to Committee on Human Resources and Education

SUMMARY—Requires the Division of Mental Health and Developmental Services of the Department of Health and Human Services to provide copies of serious incident reports involving clients to certain agencies. (BDR 39-298)

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

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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 the Division of Mental Health and Developmental Services of the Department of Health and Human Services to provide copies of reports concerning serious incidents involving clients to certain agencies; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

1 The Federal Government has established several protection and advocacy
2 programs to address the needs of persons with disabilities. (The Developmental
3 Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq.;
4 the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§
5 10801 et seq.; the Protection and Advocacy for Individuals with Traumatic Brain
6 Injury Act, 42 U.S.C. § 300d-52; the Protection and Advocacy of Individual Rights
7 Program, 29 U.S.C. § 794e) To ensure the programs are carried out in the manner
8 required, each state is required to establish or designate an agency within the state
9 as the protection and advocacy system for the human, legal and service rights of
10 individuals with disabilities. The agency is required to investigate incidents
11 involving death or serious bodily injury to persons with disabilities in public and
12 private facilities and monitor facilities and other supervised living arrangements of
13 persons with disabilities to ensure their living environments are free from abuse and
14 neglect.



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The federal Health Insurance Portability and Accountability Act (HIPAA) protects the confidentiality of health information. (42 U.S.C. §§ 1320d et seq.) Federal regulation authorizes the disclosure of health information that would otherwise be prohibited by HIPAA if the disclosure is made pursuant to another law, including a state law. (45 C.F.R. § 164.512) **Section 1** of this bill requires the Division of Mental Health and Developmental Services of the Department of Health and Human Services to provide to the agency in Nevada established or designated as the protection and advocacy system for individuals with disabilities a copy of each report required or requested by the Division regarding a serious incident involving a client of the Division, including any event or incident which the Division determines has an adverse effect on the health, welfare or safety of a client. **Sections 2 and 3** of this bill make an exception to the confidentiality of medical records of clients to the extent the information contained in a medical record appears in a serious incident report provided to the agency. (NRS 433.482, 433A.360)

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

Section 1. Chapter 433 of NRS is hereby amended by adding thereto a new section to read as follows:

1. At least once each calendar quarter, the Division shall provide to the agency in Nevada which has been established or designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq., the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801 et seq., the Protection and Advocacy for Individuals with Traumatic Brain Injury Act, 42 U.S.C. § 300d-52 or the Protection and Advocacy of Individual Rights Program, 29 U.S.C. § 794e, a copy of each report required or requested by the Division regarding a serious incident involving a client.

2. As used in this section:

(a) "Client" means a person who seeks, on his own or another's initiative, and can benefit from, care, treatment, training or treatment to competency provided by:

(1) A division facility;

(2) An agency with which the Division contracts to provide services to persons with mental illness, mental retardation or a related condition; or

(3) The Division.

(b) "Serious incident involving a client" means:

(1) Suicide or a threat or attempt of suicide by a client;

(2) Death of a client which is not caused by suicide;

(3) Any instance in which a client:

(I) Is assaulted or threatened with harm or violence;

(II) Assaults or threatens another person;



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(III) Is missing from the physical custody of the Division, a division facility or any agency with which the Division contracts to provide services; or

(IV) Is suspected or accused of committing a crime;

(4) Any instance of abuse or neglect of a client, as defined in NRS 433.554;

(5) Physical injury or illness of a client which is serious enough to require medical attention or admission to a hospital or other facility that provides acute care; and

(6) Any other event or incident which the Division determines has an adverse effect on the health, welfare or safety of a client.

Sec. 2. NRS 433.482 is hereby amended to read as follows:

433.482 Each client admitted for evaluation, treatment or training to a facility has the following personal rights, a list of which must be prominently posted in all facilities providing those services and must be otherwise brought to the attention of the client by such additional means as prescribed by regulation:

1. To wear his own clothing, to keep and use his own personal possessions, including his toilet articles, unless those articles may be used to endanger his or others' lives, and to keep and be allowed to spend a reasonable sum of his own money for expenses and small purchases.

2. To have access to individual space for storage for his private use.

3. To see visitors each day.

4. To have reasonable access to telephones, both to make and receive confidential calls.

5. To have ready access to materials for writing letters, including stamps, and to mail and receive unopened correspondence, but:

(a) For the purposes of this subsection, packages are not considered as correspondence; and

(b) Correspondence identified as containing a check payable to a client may be subject to control and safekeeping by the administrative officer of that facility or his designee, so long as the client's record of treatment documents the action.

6. To have reasonable access to an interpreter if the client does not speak English or is hearing impaired.

7. To designate a person who must be kept informed by the facility of the client's medical and mental condition, if the client signs a release allowing the facility to provide such information to the person.

8. To have access to his medical records denied to any person other than:



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(a) A member of the staff of the facility or related medical personnel, as appropriate;

(b) A person who obtains a waiver by the client of his right to keep the medical records confidential; ~~for~~

(c) A person who obtains a court order authorizing the access ~~H~~ ; or

(d) The agency in Nevada which has been established or designated pursuant to the Developmental Disabilities Assistance and Bill of Rights Act of 2000, 42 U.S.C. §§ 15001 et seq., the Protection and Advocacy for Individuals with Mental Illness Act, 42 U.S.C. §§ 10801 et seq., the Protection and Advocacy for Individuals with Traumatic Brain Injury, 42 U.S.C. § 300d-52 or the Protection and Advocacy of Individual Rights Program, 29 U.S.C. § 794e, to the extent information contained in his medical records appears in a serious incident report provided to the agency pursuant to section 1 of this act.

9. Other personal rights as specified by regulation of the Commission.

Sec. 3. 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 *or designated* pursuant to the Developmental Disabilities Assistance and Bill of Rights Act ~~H~~ *of 2000*, 42 U.S.C. §§ ~~{6041}~~ *15001* et seq., ~~for~~ the Protection and Advocacy for ~~{Mentally-Ill}~~ *Individuals with Mental Illness* Act , ~~{of 1986,}~~ 42 U.S.C. §§ 10801 et seq., *the Protection and Advocacy for Individuals with Traumatic Brain Injury Act, 42 U.S.C. § 300d-52, or the Protection and Advocacy of Individual Rights Program, 29 U.S.C. § 794e*, when the Administrator deems it necessary for the proper care of the client.



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(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 *or designated* pursuant to 42 U.S.C. §§ ~~6041~~ 15001 et seq. , ~~for~~ 42 U.S.C. §§ 10801 et seq. , *42 U.S.C. § 300d-52 or 29 U.S.C. § 794e* if:

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

(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 ~~H~~ ; *or*

(3) Information contained in the record pertains to a serious incident report provided to the agency pursuant to section 1 of this act.

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

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.

Sec. 4. This act becomes effective on July 1, 2007.

