

HOUSE BILL No. 1675

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-18-2-296.5; 4IC 16-39-2.

Synopsis: Access to mental health records. Defines "psychotherapy notes" for purposes of the law concerning access to mental health records. Requires psychotherapy notes to be kept in a separate section of a mental health record. Specifies a process for a patient to obtain a physician review related to a determination concerning the patient's access to the patient's mental health records.

Effective: July 1, 2009.

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January 16, 2009, read first time and referred to Committee on Rules and Legislative Procedures.

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First Regular Session 116th General Assembly (2009)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2008 Regular Session of the General Assembly.

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HOUSE BILL No. 1675



A BILL FOR AN ACT to amend the Indiana Code concerning health.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-18-2-296.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: **Sec. 296.5. "Psychotherapy notes" has**
4 **the meaning set forth in 45 CFR 164.501.**

5 SECTION 2. IC 16-39-2-2, AS AMENDED BY P.L.141-2006,
6 SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2009]: Sec. 2. **(a)** A record for each patient receiving mental
8 health services shall be maintained by the provider. The mental health
9 record must contain the information that the division of mental health
10 and addiction, the division of disability and rehabilitative services, or
11 the state department requires by rule. The provider is:

- 12 (1) the owner of the mental health record;
- 13 (2) responsible for the record's safekeeping; and
- 14 (3) entitled to retain possession of the record.

15 The information contained in the mental health record belongs to the
16 patient involved as well as to the provider. The provider shall maintain
17 the original mental health record or a microfilm of the mental health



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record for at least seven (7) years.

(b) The psychotherapy notes contained in a mental health record must be maintained in a section that is separate from the remainder of the contents of the mental health record.

SECTION 3. IC 16-39-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. **(a) A patient is entitled to inspect and copy the patient's own mental health record, including the psychotherapy notes contained in the mental health record.** However, if the provider that is responsible for the patient's mental health records determines for good medical cause, upon the advice of a physician, that **a part of the information requested under this section is detrimental to the physical or mental health of the patient, or is likely to cause the patient to harm the patient or another person, the provider may withhold from the patient the part of the information from the patient determined to be detrimental or to potentially result in harm. The provider shall allow the patient access to the remainder of the mental health record that is not determined to be detrimental or likely to result in harm.**

(b) If the provider withholding information under subsection (a) is a state institution or agency, the patient may appeal the provider's refusal to permit the patient to inspect and copy the patient's own record under IC 4-21.5.

(c) If the provider withholding information under subsection (a) is not a state institution or agency, the patient may request a review by a physician who is chosen by the patient and agrees to perform the review as follows:

(1) The physician shall submit a written request to the provider, including all of the following:

(A) A statement that the request is submitted under IC 16-39-2-4(c).

(B) The name of the patient.

(C) The name, address, and telephone number of the physician.

(D) The dates of care to which the requested mental health records containing the withheld information apply.

(E) A signed and dated statement by the patient authorizing the provider to release the mental health records containing the withheld information to the physician. The authorization, unless otherwise noted, is valid for ninety (90) days after the date signed.

(2) A provider receiving a request submitted under subdivision (1) shall, not more than thirty (30) days after

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receiving the request, provide a copy of the requested mental health records containing the withheld information directly to the physician submitting the request.

(3) Upon receipt of a copy of the mental health records, the physician shall review the mental health records, perform any necessary examination of the patient, and make a determination concerning the patient's request for access to the withheld information. If the physician determines that:

(A) the information requested is:

(i) not detrimental to the physical or mental health of the patient; and

(ii) not likely to result in harm by or to the patient or another person;

the provider shall provide the mental health records containing the withheld information to the patient; or

(B) only a part of the information requested is:

(i) not detrimental to the physical or mental health of the patient; and

(ii) not likely to result in harm by or to the patient or another person;

the provider shall provide only the part of the mental health records that is determined not detrimental or likely to result in harm.

(d) Subsection (c) applies only when information is withheld from a patient under subsection (a) and does not otherwise expand or limit access to mental health records as provided for under state or federal law.

SECTION 4. IC 16-39-2-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) This section applies to private and public treating providers.

(b) Upon a patient's written request and reasonable notice, a patient's mental health record, **including psychotherapy notes**, shall be made available for inspection and copying by the provider at any time to an individual or organization designated by the patient or to the patient's legal representative.

(c) A patient's written request for the release of the patient's mental health record under this section must include the following:

(1) The name of the patient.

(2) The name of the person requested to release the patient's mental health record.

(3) The name of the person, provider, or organization to whom the patient's mental health record is to be released.

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- 1 (4) The purpose of the release.
- 2 (5) A description of the information to be released from the
- 3 mental health record.
- 4 (6) The signature of the patient.
- 5 (7) The date the request is signed.
- 6 (8) A statement that the patient's consent to release of mental
- 7 health records is subject to revocation at any time, except to the
- 8 extent that action has been taken in reliance on the patient's
- 9 consent.
- 10 (9) The date, event, or condition on which the patient's consent to
- 11 release of mental health records will expire if not previously
- 12 revoked.
- 13 (d) Unless otherwise specified in a written request under this
- 14 section, a request for release of records is valid for one hundred eighty
- 15 (180) days after the date the request is made.
- 16 (e) A request for release of records under this section may be
- 17 revoked by the patient at any time, except to the extent that action has
- 18 been taken in reliance on the consent.
- 19 (f) Mental health records requested by the patient to be released
- 20 under this section may be released by the provider receiving the
- 21 request, regardless of whether the patient is still receiving services
- 22 from the provider.

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