

HOUSE BILL No. 1493

DIGEST OF INTRODUCED BILL

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

Synopsis: Access to mental health records. Defines "psychotherapy notes" for purposes of the law concerning access to mental health records. Specifies that psychotherapy notes are the property of only the provider and must be kept separate from 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, excluding psychotherapy notes.

Effective: July 1, 2010.

Messmer

January 20, 2011, read first time and referred to Committee on Public Health.

C
o
p
y



First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

C
o
p
y

HOUSE BILL No. 1493



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, 2010]: **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, 2010]: 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



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

record for at least seven (7) years.

(b) A provider's psychotherapy notes belong only to the provider, are not part of the patient's mental health record, and must be maintained separately from the patient's mental health record.

SECTION 3. IC 16-39-2-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. **(a)** A patient is entitled to inspect and copy the patient's own 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 **all or any 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 **all or any part of** the information ~~from the patient.~~ **determined to be detrimental or likely to result in harm. The provider shall allow the patient access to any 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 did not participate in the original decision to withhold the information, is chosen by the provider, 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 this subsection.
- (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 statement signed and dated 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 until the expiration of ninety (90) days after the date signed.

C
O
P
Y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33

(2) A provider receiving a request submitted under subdivision (1) shall, not more than thirty (30) days after 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. Subject to subdivision (4), the provider shall provide or deny the patient access to the withheld information in accordance with the determination of the physician.

(4) 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 to not be 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.

**C
O
P
Y**

