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The Truth and Responsibility in Mental Health Practices Act

STATE VERSION I

HOUSE BILL NO.

_____ GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES

AN ACT

Relating to mental health treatment.

Be it enacted by the General Assembly of the state of _____ as follows:

Section 1. As used in sections 1 to 7 of this act, the following terms mean:

- (1) "Informed consent," consent to mental health treatment based upon a full, fair and truthful disclosure of known and reasonably foreseeable benefits, risks and hazards of the proposed treatment and of alternative treatments. This process allows the patient, client or recipient of mental health treatments, or the legal guardian of such patient, client or recipient, to exercise a free and independent judgment by reasonably balancing the probable risks against the probable benefits;
- (2) "Mental health care provider," a psychiatrist, psychologist, social worker, chemical dependency counselor, group therapy leader, licensed or certified professional counselor, psychiatric nurse or any other individual or organization that provides mental health services.
- (3) "Research" and "reliable scientific research," publicly documented investigations of falsifiable hypotheses, using appropriately constructed treatment and nontreatment control groups, constructed so as to permit determinations of methodological reliability and validity, conducted at reputable institutions of higher learning, medical schools, research institutes and departments of psychology and reported in sufficient detail to be meaningfully interpreted and replicated at alternate research sites. Research will generally follow the criteria for acceptable scientific conceptions and evidence as noted by the United States Supreme Court in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 113 SCt 2786(1993).

Section 2. 1. Mental health patients and clients, as all consumers of medical and other health care services, have a legal and moral right to be fully and fairly informed of the risks and hazards and relative benefits of all proposed mental health treatments and of alternative treatments.

2. Mental health care providers shall truthfully inform all patients of the risks, hazards and relative benefits of all proposed mental health treatments and of alternative treatments.

Section 3. 1. All requests for reimbursement for mental health treatment

shall be accompanied by an informed consent form which shall include at a minimum the following information:

- (1) A brief description of the proposed treatment plan;
- (2) Scientific journal citations demonstrating that the proposed treatment has been proven reasonably safe and effective by reliable and valid scientific research studies including treatment outcome research comparing the proposed treatment to alternative treatments and control subjects;
- (3) A brief and truthful listing of the known and reasonably foreseeable risks, hazards and relative benefits of the proposed treatment;
- (4) A list of alternative treatments with a brief and truthful description of the benefits and risks of each;
- (5) The signatures of the mental health care provider and the patient signifying mutual agreement to the proposed treatment plan.

2. Licensing boards governing the conduct of mental health care providers shall adopt and enforce rules of professional conduct mandating the informed consent contained in section 1 of this act.

Section 4.1. Every patient, client or recipient of mental health services in the state of _____ shall receive a nontechnical explanation of the nature and purpose of the mental health treatment procedures, including all forms of psychotherapy, proposed to the patient, client or recipient of mental health services. This nontechnical informed consent explanation shall include at a minimum the following information:

- (1) A brief description of the proposed treatment plan;
- (2) A statement of whether or not the proposed research has been proven safe and effective by reliable and valid scientific methods, including a listing of scientific journal citations demonstrating that the proposed treatment has been proven safe and effective by reliable and valid scientific research studies including treatment outcome research comparing the proposed treatment to alternative treatments and control subjects;
- (3) A brief and truthful discussion of the known and reasonably foreseeable risks, hazards and relative benefits of the proposed treatment;
- (4) A brief and truthful discussion of alternative treatments and the known and reasonably foreseeable benefits and risks of each.

2. The informed consent discussion required by subsection 1 of this section shall be documented by the signatures of the mental health care provider and the patient, client or recipient of mental health services signifying mutual agreement to the proposed treatment plan.

3. Patients, clients or recipients of mental health services who are incompetent, by virtue of infancy, mental status or other legally valid reason, shall provide informed consent for mental health treatment through the written informed consent and signature of a legal guardian.

Section 5.1. State and private insurance programs regulated by the state shall not reimburse any mental health care provider for the provision of a treatment unless such treatment has been proven reasonably safe and

effective by reliable and valid scientific means.

2. Mental health care providers have a legal and moral obligation to offer treatments and assessments, including all forms of psychotherapy or testing, to the public that have been demonstrated to be safe, valid and effective by reliable and valid scientific investigations.

3. To enforce this obligation and protect the citizens and families of the state of _____ from hazardous, ineffective or fraudulent forms of mental health practices, mental health care providers are required to truthfully inform insurance and reimbursement system of the reliable scientific evidence of safety and efficacy, if any, for all proposed mental health treatments and alternative treatments.

Section 6.1. Except for research purposes, psychological tests used by mental health care providers shall include a manual or other published information which fully describes the development of the test, the rationale for the test, the validity and reliability of the test, and normative data. A reasonable discussion of the strengths and weaknesses of the method or procedure shall be offered to the consumer and the signed consent of the client shall be obtained prior to use of the method or procedure.

2. A mental health care provider who uses computerized testing services is responsible for the legitimacy and accuracy of the test interpretations. Computer generated interpretations of tests shall be used only in conjunction with professional judgment. A mental health care provider shall indicate when a test interpretation is not based on direct contact with the client, that is, when it is a blind interpretation. A reasonable discussion of the strengths and weaknesses of the method or procedure shall be offered to the consumer and the signed consent of the client shall be obtained prior to use of the method or procedure.

3. A mental health care provider shall be qualified to administer and interpret tests employed. A reasonable discussion of the strengths and weaknesses of the method or procedure shall be offered to the consumer and the signed consent of the client shall be obtained prior to use of the method or procedure.

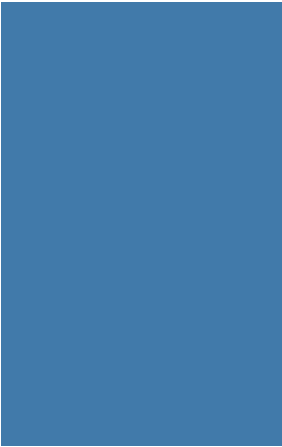
4. A mental health care provider shall offer psychological tests for commercial publication only to those publishers who present tests in a professional manner and who distribute them only to qualified professional users. The mental health care provider shall ensure that test advertisements are factual and descriptive.

5. The provision of a written or oral report, including correspondence regarding clients or testimony of a mental health care provider as an expert witness, concerning the psychological or emotional health or state of a client, is a psychological service. The report shall include:

(1) A description of all assessments, evaluations, or other procedures upon which the mental health care provider's conclusions are based;

(2) Any reservations or qualifications concerning the validity or reliability of the conclusions formulated and recommendations made, taking into account the conditions under which the procedures were carried out, the limitations of scientific procedures and psychological descriptions, and the impossibility of absolute predictions;

(3) A notation concerning any discrepancy, disagreement, or conflicting



information regarding the circumstances of the case that may have a bearing on the mental health care provider's conclusions; and

(4) A statement as to whether the conclusions are based on direct contact between the mental health care provider and the client.

Section 7. A violation of any of the provisions of sections 1 to 7 of this act shall constitute, at the discretion of the relevant licensing board, grounds for revocation or suspension of any mental health care provider's license or certification to practice in the state of _____. Each violation shall be reported to the public upon inquiry.

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