

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 672 Session of 2019

INTRODUCED BY ORTITAY, HAHN, SNYDER, RYAN, PICKETT, BROWN, PYLE, DUNBAR, GROVE, LONGIETTI, KIRKLAND, DIGIROLAMO, BERNSTINE, MILLARD, MASSER, B. MILLER, NEILSON, SCHLEGEL CULVER, MIZGORSKI, DeLUCA AND KEEFER, MARCH 1, 2019

AS REPORTED FROM COMMITTEE ON HUMAN SERVICES, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 14, 2019

AN ACT

1 Amending the act of February 13, 1970 (P.L.19, No.10), entitled
2 "An act enabling certain minors to consent to medical, dental
3 and health services, declaring consent unnecessary under
4 certain circumstances," further providing for mental health
5 treatment and for release of medical records.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 1.1 and 1.2 of the act of February 13,
9 1970 (P.L.19, No.10), entitled "An act enabling certain minors
10 to consent to medical, dental and health services, declaring
11 consent unnecessary under certain circumstances," are amended to
12 read:

13 Section 1.1. Mental Health Treatment.--(a) [The following
14 shall apply to consent for outpatient treatment:

15 (1) Any minor who is fourteen years of age or older may
16 consent on his or her own behalf to outpatient mental health
17 examination and treatment, and the minor's parent's or legal
18 guardian's consent shall not be necessary.

1 (2) A parent or legal guardian of a minor less than eighteen
2 years of age may consent to voluntary outpatient mental health
3 examination or treatment on behalf of the minor, and the minor's
4 consent shall not be necessary.

5 (3) A minor may not abrogate consent provided by a parent or
6 legal guardian on the minor's behalf, nor may a parent or legal
7 guardian abrogate consent given by the minor on his or her own
8 behalf.

9 (b) The following shall apply to consent for inpatient
10 treatment:

11 (1) A minor's parent or legal guardian may consent to
12 voluntary inpatient treatment pursuant to Article II of the act
13 of July 9, 1976 (P.L.817, No.143), known as the "Mental Health
14 Procedures Act," on behalf of a minor less than eighteen years
15 of age on the recommendation of a physician who has examined the
16 minor. The minor's consent shall not be necessary.

17 (2) Nothing in this section shall be construed as
18 restricting or altering a minor's existing rights, including,
19 but not limited to, those enumerated under the "Mental Health
20 Procedures Act," to consent to voluntary inpatient mental health
21 treatment on his or her own behalf at fourteen years of age or
22 older.

23 (3) Nothing in this section shall be construed as
24 restricting or altering a parent or legal guardian's existing
25 rights to object to a minor's voluntary treatment provided
26 pursuant to the minor's consent on his or her own behalf.

27 (4) A minor may not abrogate consent provided by a parent or
28 legal guardian on the minor's behalf, nor may a parent or legal
29 guardian abrogate consent given by the minor on his or her own
30 behalf.

1 (5) A parent or legal guardian who has provided consent to
2 inpatient treatment under paragraph (1) may revoke that consent,
3 which revocation shall be effective unless the minor who is
4 fourteen to eighteen years of age has provided consent for
5 continued inpatient treatment.

6 (6) A minor who is fourteen to eighteen years of age who has
7 provided consent to inpatient treatment may revoke that consent,
8 which revocation shall be effective unless the parent or legal
9 guardian to the minor has provided for continued treatment under
10 paragraph (1).

11 (7) At the time of admission, the director of the admitting
12 facility or his designee shall provide the minor with an
13 explanation of the nature of the mental health treatment in
14 which he may be involved together with a statement of his
15 rights, including the right to object to treatment by filing a
16 petition with the court. If the minor wishes to exercise this
17 right, the director of the facility or his designee shall
18 provide a form for the minor to provide notice of the request
19 for modification or withdrawal from treatment. The director of
20 the facility or his designee shall file the signed petition with
21 the court.

22 (8) Any minor fourteen years of age or older and under
23 eighteen years of age who has been confined for inpatient
24 treatment on the consent of a parent or legal guardian and who
25 objects to continued inpatient treatment may file a petition in
26 the court of common pleas requesting a withdrawal from or
27 modification of treatment. The court shall promptly appoint an
28 attorney for such minor person and schedule a hearing to be held
29 within seventy-two hours following the filing of the petition,
30 unless continued upon the request of the attorney for the minor,

1 by a judge or mental health review officer who shall determine
2 whether or not the voluntary mental health treatment is in the
3 best interest of the minor. For inpatient treatment to continue
4 against the minor's wishes, the court must find all of the
5 following by clear and convincing evidence:

- 6 (i) that the minor has a diagnosed mental disorder;
- 7 (ii) that the disorder is treatable;
- 8 (iii) that the disorder can be treated in the particular
9 facility where the treatment is taking place; and
- 10 (iv) that the proposed inpatient treatment setting
11 represents the least restrictive alternative that is medically
12 appropriate.

13 (9) A minor ordered to undergo treatment due to a
14 determination under paragraph (8) shall remain and receive
15 inpatient treatment at the treatment setting designated by the
16 court for a period of up to twenty days. The minor shall be
17 discharged whenever the attending physician determines that the
18 minor no longer is in need of treatment, consent to treatment
19 has been revoked under paragraph (5) or at the end of the time
20 period of the order, whichever occurs first. If the attending
21 physician determines continued inpatient treatment will be
22 necessary at the end of the time period of the order and the
23 minor does not consent to continued inpatient treatment prior to
24 the end of the time period of the order, the court shall conduct
25 a review hearing in accordance with this subsection to determine
26 whether to:

- 27 (i) release the minor; or
- 28 (ii) make a subsequent order for inpatient mental health
29 treatment for a period not to exceed sixty days subject to
30 discharge of the minor whenever the attending physician

1 determines that the minor no longer is in need of treatment, or
2 if consent has been revoked under paragraph (5).

3 (10) The procedure for a sixty-day period of treatment under
4 paragraph (9) (ii) shall be repeated until the court determines
5 to release the minor or the minor is discharged in accordance
6 with paragraph (9).

7 (11) Nothing in this subsection shall prevent a
8 nonconsenting parent who has legal custody rights of a minor
9 child to object to the consent given by the other parent to
10 inpatient treatment under paragraph (1) by filing a petition in
11 a court of common pleas in the county where the child resides.
12 The court shall hold a hearing on the objection within seventy-
13 two hours of the filing of the petition.

14 (c) Nothing in subsections (a) and (b) is intended to
15 restrict the rights of a minor who satisfies the conditions of
16 section 1.

17 (d) As used in this section, the following words and phrases
18 shall have the meanings given to them in this subsection:

19 "Court of common pleas" means the court of common pleas in
20 the county where the subject of the proceeding is being treated.

21 "Facility" means any mental health establishment, hospital,
22 clinic, institution, center, day-care center, base service unit,
23 community mental health center, or part thereof, that provides
24 for the diagnosis, treatment, care or rehabilitation of mentally
25 ill persons.

26 "Inpatient treatment" means all mental health treatment that
27 requires full-time or part-time residence in a facility that
28 provides mental health treatment.

29 "Mental health treatment" means a course of treatment,
30 including evaluation, diagnosis, therapy and rehabilitation,

1 designed and administered to alleviate an individual's pain and
2 distress and to maximize the probability of recovery from mental
3 illness. The term also includes care and other services which
4 supplement treatment and aid or promote recovery.] The following
5 shall apply to consent for voluntary inpatient and outpatient
6 mental health treatment:

7 (1) A parent or legal guardian of a minor less than eighteen
8 years of age may consent to voluntary inpatient mental health
9 treatment under Article II of the act of July 9, 1976 (P.L.817,
10 No.143), known as the "Mental Health Procedures Act," IF <--
11 INPATIENT MENTAL HEALTH TREATMENT IS DETERMINED TO BE NECESSARY
12 BY A PHYSICIAN, LICENSED CLINICAL PSYCHOLOGIST OR OTHER MENTAL
13 HEALTH PROFESSIONAL or outpatient mental health treatment on
14 behalf of the minor, and the minor's consent shall not be
15 necessary. AN INITIAL DETERMINATION THAT INPATIENT MENTAL HEALTH <--
16 TREATMENT OF A MINOR IS NECESSARY UNDER THIS PARAGRAPH SHALL BE
17 INDEPENDENT OF THE REQUIREMENTS OF SECTION 205 OF THE "MENTAL
18 HEALTH PROCEDURES ACT."

19 (2) A minor who is fourteen years of age or older may
20 consent on the minor's own behalf to voluntary inpatient mental
21 health treatment as provided under Article II of the "Mental
22 Health Procedures Act" or outpatient mental health treatment,
23 and the minor's parent's or legal guardian's consent shall not
24 be necessary.

25 (3) A minor may not abrogate consent provided by a parent or
26 legal guardian on the minor's behalf TO VOLUNTARY INPATIENT OR <--
27 OUTPATIENT MENTAL HEALTH TREATMENT UNDER PARAGRAPH (1).

28 (4) A parent or legal guardian who has provided consent to
29 voluntary inpatient or outpatient mental health treatment under
30 paragraph (1) may revoke that consent, which revocation shall be

1 effective unless the minor who is fourteen to eighteen years of
2 age has provided consent for continued voluntary inpatient or
3 outpatient mental health treatment.

4 (5) A minor who is fourteen to eighteen years of age who has
5 provided consent to voluntary inpatient or outpatient mental
6 health treatment may revoke that consent, which revocation shall
7 be effective unless the parent or legal guardian to the minor
8 has provided for continued treatment under paragraph (1).

9 (6) AT THE TIME OF ADMISSION, THE DIRECTOR OF THE ADMITTING <--
10 FACILITY OR A DESIGNEE OF THE DIRECTOR SHALL PROVIDE THE MINOR
11 WITH AN EXPLANATION OF THE NATURE OF THE MENTAL HEALTH TREATMENT
12 IN WHICH THE MINOR MAY BE INVOLVED TOGETHER WITH A STATEMENT OF
13 THE MINOR'S RIGHTS, INCLUDING THE RIGHT TO OBJECT TO TREATMENT
14 BY FILING A PETITION WITH THE COURT. IF A MINOR WISHES TO
15 EXERCISE THIS RIGHT, THE DIRECTOR OF THE FACILITY OR A DESIGNEE
16 OF THE DIRECTOR SHALL PROVIDE A FORM FOR THE MINOR TO PROVIDE
17 NOTICE OF THE REQUEST FOR MODIFICATION OR WITHDRAWAL FROM
18 TREATMENT. THE DIRECTOR OF THE FACILITY OR A DESIGNEE OF THE
19 DIRECTOR SHALL FILE THE SIGNED PETITION WITH THE COURT.

20 (7) A MINOR FOURTEEN YEARS OF AGE OR OLDER AND UNDER
21 EIGHTEEN YEARS OF AGE WHO HAS BEEN CONFINED FOR INPATIENT
22 TREATMENT ON THE CONSENT OF A PARENT OR LEGAL GUARDIAN AND WHO
23 OBJECTS TO CONTINUED INPATIENT TREATMENT MAY FILE A PETITION IN
24 THE COURT OF COMMON PLEAS REQUESTING A WITHDRAWAL FROM OR
25 MODIFICATION OF TREATMENT. THE COURT SHALL PROMPTLY APPOINT AN
26 ATTORNEY FOR THE MINOR AND SCHEDULE A HEARING TO BE HELD WITHIN
27 SEVENTY-TWO HOURS FOLLOWING THE FILING OF THE PETITION, UNLESS
28 CONTINUED UPON THE REQUEST OF THE ATTORNEY FOR THE MINOR, BY A
29 JUDGE OR MENTAL HEALTH REVIEW OFFICER WHO SHALL DETERMINE
30 WHETHER OR NOT THE VOLUNTARY MENTAL HEALTH TREATMENT IS IN THE

1 BEST INTEREST OF THE MINOR. FOR INPATIENT TREATMENT TO CONTINUE
2 AGAINST THE MINOR'S WISHES, THE COURT MUST FIND ALL OF THE
3 FOLLOWING BY CLEAR AND CONVINCING EVIDENCE:

4 (I) THAT THE MINOR HAS A DIAGNOSED MENTAL DISORDER;
5 (II) THAT THE DISORDER IS TREATABLE;
6 (III) THAT THE DISORDER CAN BE TREATED IN THE PARTICULAR
7 FACILITY WHERE THE TREATMENT IS TAKING PLACE; AND

8 (IV) THAT THE PROPOSED INPATIENT TREATMENT SETTING
9 REPRESENTS THE LEAST RESTRICTIVE ALTERNATIVE THAT IS MEDICALLY
10 APPROPRIATE.

11 (b) As used in this section, the following words and phrases
12 shall have the meanings given to them in this subsection:

13 "Facility" means any mental health establishment, hospital,
14 clinic, institution, center, day-care center, base service unit,
15 community mental health center, or part thereof, that provides
16 for the diagnosis, treatment, care or rehabilitation of persons
17 with mental illness.

18 "Inpatient treatment" means all mental health treatment that
19 requires full-time or part-time residence in a facility that
20 provides mental health treatment.

21 "Mental health treatment" means a course of treatment,
22 including evaluation, diagnosis, therapy and rehabilitation,
23 designed and administered to alleviate an individual's pain and
24 distress and to maximize the probability of recovery from mental
25 illness. The term also includes care and other services which
26 supplement treatment and aid or promote recovery.

27 Section 1.2. Release of Medical Records.--(a) [When a
28 parent or legal guardian has consented to treatment of a minor
29 fourteen years of age or older under section 1.1(a)(2) or (b)
30 (1), the following shall apply to release of the minor's medical

1 records and information:

2 (1) The parent or legal guardian may consent to release of
3 the minor's medical records and information, including records
4 of prior mental health treatment for which the parent or legal
5 guardian had provided consent, to the minor's current mental
6 health treatment provider.

7 (2) If deemed pertinent by the minor's current mental health
8 treatment provider, the release of information under this
9 subsection may include a minor's mental health records and
10 information from prior mental health treatment for which the
11 minor had provided consent to treatment.

12 (3) The parent or legal guardian may consent to the release
13 of the minor's mental health records and information to the
14 primary care provider if, in the judgment of the minor's current
15 mental health treatment provider, such release would not be
16 detrimental to the minor.

17 (b) Release of mental health records and information under
18 subsection (a) shall be limited to release directly from one
19 provider of mental health treatment to another or from the
20 provider of mental health treatment to the primary care
21 provider.

22 (c) The parent or legal guardian who is providing consent to
23 mental health treatment of a minor fourteen years of age or
24 older under section 1.1(a)(2) or (b)(1) shall have the right to
25 information necessary for providing consent to the minor's
26 mental health treatment, including symptoms and conditions to be
27 treated, medications and other treatments to be provided, risks
28 and benefits and expected results.

29 (d) Except to the extent set forth in subsection (a), (b) or
30 (c), the minor shall control the release of the minor's mental

1 health treatment records and information to the extent allowed
2 by law. When a minor has provided consent to outpatient mental
3 health treatment under section 1.1(a) (1), subject to subsection
4 (a) (2), the minor shall control the records of treatment to the
5 same extent as the minor would control the records of inpatient
6 care or involuntary outpatient care under the act of July 9,
7 1976 (P.L.817, No.143), known as the "Mental Health Procedures
8 Act," and its regulations.

9 (e) Consent to release of mental health records for all
10 purposes and in all circumstances other than those provided for
11 in this section shall be subject to the provisions of the
12 "Mental Health Procedures Act" and other applicable Federal and
13 State statutes and regulations.] When a parent or legal guardian

14 has consented to voluntary inpatient or outpatient mental health
15 treatment of a minor under section 1.1, the following shall
16 apply to release of the minor's medical records and information:

17 (1) The parent or legal guardian may consent to release of
18 the minor's medical records and information, including records
19 of prior mental health treatment for which the parent or legal
20 guardian had provided consent, to the minor's current mental
21 health treatment provider.

22 (2) If deemed pertinent by the minor's current mental health
23 treatment provider, the release of information under this
24 subsection may include a minor's mental health records and
25 information from prior mental health treatment for which the
26 minor had provided consent to treatment.

27 (3) The parent or legal guardian may consent to the release
28 of the minor's mental health records and information to the
29 primary care provider if, in the judgment of the minor's current
30 mental health treatment provider, the release would not be

1 detrimental to the minor.

2 (b) Release of mental health records and information under
3 subsection (a) shall be limited to release directly from one
4 provider of mental health treatment to another or from the
5 provider of mental health treatment to the primary care
6 provider.

7 (c) The parent or legal guardian who is providing consent to
8 voluntary inpatient or outpatient mental health treatment of a
9 minor under section 1.1 shall have the right to information
10 necessary for providing consent to the minor's mental health
11 treatment, including symptoms and conditions to be treated,
12 medications and other treatments to be provided, risks and
13 benefits and expected results.

14 (d) Except to the extent provided subsection (a), (b) or
15 (c), the minor shall control the release of the minor's mental
16 health treatment records and information to the extent allowed
17 by law. When a minor has provided consent to outpatient mental
18 health treatment under section 1.1, subject to subsection (a)
19 (2), the minor shall control the records of treatment to the
20 same extent as the minor would control the records of inpatient
21 care or involuntary outpatient care under the act of July 9,
22 1976 (P.L.817, No.143), known as the "Mental Health Procedures
23 Act," and its regulations.

24 (e) Consent to release of mental health records for all
25 purposes and in all circumstances other than those provided for
26 in this section shall be subject to the provisions of the
27 "Mental Health Procedures Act" and other applicable Federal and
28 State statutes and regulations.

29 Section 2. This act shall take effect in 60 days.