

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 826 Session of
2003

INTRODUCED BY MAITLAND, MACKERETH, VANCE, TRUE, BAKER, BARRAR,
BROWNE, CAPPELLI, CAWLEY, CRAHALLA, DeLUCA, DeWEESE, EGOLF,
FAIRCHILD, FLEAGLE, GRUCELA, HARHAI, HORSEY, KELLER,
LAUGHLIN, LEDERER, LEH, MANN, McILHATTAN, McNAUGHTON,
R. MILLER, S. MILLER, PRESTON, ROEBUCK, SATHER, SAYLOR,
SCHRODER, SCRIMENTI, B. SMITH, SURRA, J. TAYLOR, THOMAS,
TIGUE, WATSON, WEBER, E. Z. TAYLOR, O'NEILL, JAMES, HARPER
AND HERMAN, MARCH 11, 2003

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 8, 2004

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 consent to
5 treatment; providing for release of medical records and for
6 certain court reporting; and requiring a report by the
7 Legislative Budget and Finance Committee.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. The act of February 13, 1970 (P.L.19, No.10),
11 entitled "An act enabling certain minors to consent to medical,
12 dental and health services, declaring consent unnecessary under
13 certain circumstances," is amended by adding sections to read:

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

16 (1) Any minor who is fourteen years of age or older may
17 consent on his or her own behalf to outpatient mental health

examination and treatment, and the minor's parent or legal guardian's consent shall not be necessary.

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

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

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

(1) A minor's parent or legal guardian may consent to voluntary inpatient treatment, pursuant to Article II of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," on behalf of a minor less than eighteen years of age on the recommendation of a physician who has examined the minor. The examining physician shall be appropriately credentialed at the admitting facility or shall consult with a physician who is appropriately credentialed at the admitting facility. The minor's consent shall not be necessary.

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

(3) Nothing in this section shall be construed as restricting or altering a parent or legal guardian's existing rights to object to a minor's voluntary treatment provided

1 pursuant to the minor's consent on his or her own behalf.

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

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

11 (6) A minor fourteen to eighteen years of age who has
12 provided consent to inpatient treatment may revoke that consent.
13 The revocation shall be effective unless the minor's parent or
14 legal guardian has provided consent for continued inpatient
15 treatment under paragraph (1).

16 (7) At the time of admission, the director of the admitting
17 facility or his designee shall provide the minor with an
18 explanation of the nature of the mental health treatment in
19 which he may be involved together with a statement of his
20 rights, including the right to object to treatment by filing a
21 petition with the court. If the minor wishes to exercise this
22 right, the director of the facility or his designee shall
23 provide a form for the minor to provide notice of the request
24 for modification or withdrawal from treatment. The director of
25 the facility or his designee shall file the signed petition with
26 the court as soon as possible but no later than the end of the
27 next business day.

28 (8) Any minor fourteen years of age or older and under
29 eighteen years of age who has been confined for inpatient
30 treatment on the consent of a parent or legal guardian and who

1 objects to continued inpatient treatment may file a petition in
2 the court of common pleas requesting a withdrawal from or
3 modification of treatment. The court shall promptly appoint an
4 attorney for such minor person and schedule a hearing to be held
5 within seventy-two hours following the filing of the petition,
6 unless continued upon the request of the attorney for the minor
7 or by a judge for compelling reasons. The hearing shall be
8 conducted by a judge or mental health review officer who shall
9 determine whether or not the voluntary mental health treatment
10 is in the best interest of the minor. For inpatient treatment to
11 continue against the minor's wishes, the court must find all of
12 the following by clear and convincing evidence:

13 (i) that the minor has a diagnosed mental disorder;
14 (ii) that the disorder is treatable;
15 (iii) that the disorder can be treated in the particular
16 facility where the treatment is taking place; and
17 (iv) that the proposed inpatient treatment setting
18 represents the least restrictive alternative that is medically
19 appropriate.

20 (9) A minor ordered to undergo treatment due to a
21 determination under paragraph (8) shall remain and receive
22 inpatient treatment at the treatment setting designated by the
23 court for a period not more than twenty days. The minor shall be
24 discharged whenever the attending physician determines that the
25 minor no longer is in need of treatment, consent to treatment
26 has been revoked under paragraph (5), or at the end of the time
27 period of the order, whichever occurs first. If the attending
28 physician determines that continued inpatient treatment will be
29 necessary at the end of the time period of the order and the
30 minor does not consent to continued inpatient treatment, the

1 court shall, prior to the end of the time period of the order,
2 conduct a review hearing in accordance with this subsection to
3 determine whether to:

4 (i) release the minor; or

5 (ii) make a subsequent order for inpatient mental health
6 treatment for a period not to exceed sixty days subject to
7 discharge of the minor whenever the attending physician
8 determines that the minor no longer is in need of treatment or
9 if consent to treatment has been revoked under paragraph (5).

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

14 (11) NOTHING IN THIS SUBSECTION SHALL PREVENT A
15 NONCONSENTING PARENT WHO HAS LEGAL CUSTODY RIGHTS OF A MINOR
16 CHILD TO OBJECT TO THE CONSENT GIVEN BY THE OTHER PARENT TO
17 INPATIENT TREATMENT UNDER PARAGRAPH (1) BY FILING A PETITION IN
18 A COURT OF COMMON PLEAS IN THE COUNTY WHERE THE CHILD RESIDES.
19 THE COURT SHALL HOLD A HEARING ON THE OBJECTION WITHIN SEVENTY-
20 TWO HOURS OF THE FILING OF THE PETITION.

21 (c) Nothing in subsections (a) and (b) is intended to
22 restrict the rights of a minor who satisfies the conditions of
23 section 1 to consent to mental health treatment nor to enlarge
24 the rights of parents to consent to mental health treatment for
25 such minors.

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

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

30 "Facility" means any mental health establishment, hospital,

clinic, institution, center, day-care center, base service unit, community mental health center, or part thereof, that provides for the diagnosis, treatment, care or rehabilitation of mentally ill persons.

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

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

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

(1) The parent or legal guardian may consent to release of the minor's medical records and information, including, but not limited to, records of prior mental health treatment, to the minor's mental health treatment providers. If deemed pertinent by the minor's mental health treatment providers, the release may also include records of prior mental health treatment for which the minor had provided consent to treatment. Release of mental health records and information shall be limited to release directly from one provider of treatment to another.

(2) The parent or legal guardian may consent to release of the minor's mental health records and information to the primary care provider, and those records shall be provided if, in the

judgment of the minor's mental health treatment provider, the transfer would not be detrimental to the minor. Release of mental health records and information shall be limited to release directly from the provider of mental health treatment or the facility to the primary care provider.

(3) The parent or legal guardian shall have the right to information necessary for providing consent to the minor's mental health treatment, including, but not limited to, the symptoms and conditions to be treated, medications and other treatments to be provided, risks, benefits and expected results.

(4) Except to the extent set forth above, the minor shall control the release of the minor's mental health records and information to the extent allowed by law.

(b) Consent to release of mental health records for all purposes and in all circumstances other than those provided for in subsection (a) shall be subject to the provisions of the act of July 9, 1976 (P.L.817, No.143), known as the "Mental Health Procedures Act," and other applicable Federal and State statutes and regulations. Subject to the provisions of subsection (a)(1), when a minor has provided consent to outpatient mental health treatment under section 1.1(a)(1), the minor shall control the records of treatment to the same extent as the minor would control records of inpatient care or involuntary outpatient care under the "Mental Health Procedures Act" and its regulations.

Section 1.3. Court Reporting.--(a) Each court of common pleas shall report annually to the Administrative Office of Pennsylvania Courts the number of:

(1) Petitions filed under section 1.1(b)(7).

(2) Petitions resulting in minors ordered to undergo treatment.

1 (3) Subsequent treatment period ordered per minor.

2 (b) The Administrative Office of Pennsylvania Courts shall
3 compile the figures reported under this section and report its
4 findings, within sixty days of the receipt of the last report,
5 to the Judiciary Committee and the Public Health and Welfare
6 Committee of the Senate and the Judiciary Committee and the
7 Health and Human Services Committee of the House of
8 Representatives.

9 (c) This section shall expire March 1, 2005.

10 Section 2. Within twelve months following the effective date
11 of this act, the Legislative Budget and Finance Committee shall
12 prepare a report on the mental health system for children and
13 youth in this Commonwealth. The report shall evaluate the
14 continuum of mental health services for children and their
15 families and include a review of the availability of community-
16 based outpatient and inpatient mental health services across
17 this Commonwealth; statistical information on the number of
18 children needing mental health services; the timeliness and
19 extent of services; costs for various types of mental health
20 services for children and youth; the extent to which public and
21 private health insurance, including medical assistance, provides
22 coverage for different mental health treatment and services;
23 gaps in mental health services for children and youth; and the
24 impact and effectiveness of this act in respect to providing
25 mental health treatment for children and youth. The Legislative
26 Budget and Finance Committee shall report its findings and
27 recommendations to the Judiciary Committee and the Public Health
28 and Welfare Committee of the Senate and the Judiciary Committee
29 and the Health and Human Services Committee of the House of
30 Representatives.

1 Section 3. This act shall take effect in 60 days.