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By:  Allison H.B. No. 3519

A BILL TO BE ENTITLED

AN ACT

relating to disclosure of confidential patient information by a physician or mental health professional.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  (a) The legislature finds that the privilege of confidentiality between a physician and a patient and between a mental health professional and a patient is essential to foster trust and candid communication. This confidentiality should not be breached absent a compelling interest. Over the years, the legislature has created exceptions to the privilege of confidentiality, authorizing physicians and mental health professionals to disclose confidential information in certain circumstances. These exceptions recognize the importance of providing physicians and mental health professionals with discretion, rather than imposing a mandate, to disclose certain patient information to satisfy certain compelling interests.

(b)  In light of recent events involving and affecting individuals living with mental health issues, the legislature finds there is a greater need to afford physicians and mental health professionals discretion to disclose patient information when that disclosure could help mitigate harm to the patient or others.

(c)  The legislature supports the Supreme Court of Texas holding in *Thapar v. Zezulka*, 994 S.W.2d 635 (Tex. 1999), concluding that when law states a health professional "may" perform an action, the law grants discretion rather than imposes a requirement. The legislature intends for the exceptions created under this Act to be construed in the same manner, as providing discretion to disclose, but not imposing a duty to disclose. The legislature reiterates this intent by including express language to that effect in the law.

SECTION 2.  Section 611.002(b), Health and Safety Code, is amended to read as follows:

(b)  Confidential communications or records may not be disclosed except as provided by Section 611.004, 611.0041, or 611.0045.

SECTION 3.  Section 611.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a)  A professional may disclose confidential information only:

(1)  to a governmental agency if the disclosure is required or authorized by law;

(2)  to a person reasonably able to prevent or mitigate a threat, including the subject of the threat, [~~medical or law enforcement personnel~~] if the professional, in good faith, believes [~~determines~~] that disclosure is necessary to prevent or mitigate a serious and [~~there is a probability of~~] imminent threat [~~physical injury by the patient~~] to the health or safety of a person or the public [~~patient or others or there is a probability of immediate mental or emotional injury to the patient~~];

(3)  to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);

(4)  to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;

(5)  to the patient's personal representative if the patient is deceased;

(6)  to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;

(7)  to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;

(8)  in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);

(9)  to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10)  to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A)  will not use or disclose the information for any other purposes; and

(B)  will take appropriate steps to protect the information; [~~or~~]

(11)  to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code; or

(12)  to a person in accordance with Section 611.0041.

(e)  A professional who discloses confidential information under Subsection (a)(2) is presumed to have acted in good faith with regard to a belief described by that subsection if the belief is based on the professional's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

SECTION 4.  Chapter 611, Health and Safety Code, is amended by adding Sections 611.0041 and 611.0042 to read as follows:

Sec. 611.0041.  DISCLOSURE OF CONFIDENTIAL INFORMATION FOR NOTICE AND PATIENT'S CARE. (a) For a patient who is available and has the capacity to make health care decisions, a professional may disclose confidential information in accordance with this section if the professional:

(1)  obtains the patient's consent;

(2)  provides the patient with the opportunity to object to the disclosure, and the patient does not object; or

(3)  reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

(b)  For a patient who is not available or for whom the opportunity to consent or for objection to the use or disclosure under Subsection (a) cannot practicably be provided because of the patient's incapacity or an emergency, a professional may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the patient and disclose the patient's confidential information in accordance with this section if determined to be in the patient's best interests.

(c)  A professional authorized to disclose confidential information under this section may only disclose a patient's confidential information that, in the exercise of professional judgment, is directly relevant to:

(1)  the recipient's involvement with the patient's health care, including obtaining prescriptions, medical supplies, test results, or other similar forms of confidential information;

(2)  the recipient's involvement with payment for the patient's health care; or

(3)  notification to the patient's family member, the patient's legally authorized representative, or a person responsible for the patient's care of the patient's location, general condition, or death.

(d)  A professional may disclose a patient's confidential information under this section only to:

(1)  the patient's relative;

(2)  the patient's close personal friend;

(3)  a person identified by the patient to receive the disclosure;

(4)  the patient's legally authorized representative;

(5)  a person responsible for the patient's care; or

(6)  a governmental or private entity authorized by law to assist in disaster relief efforts for the purpose described by Subsection (c)(3).

(e)  A professional may disclose a patient's confidential information to a person described by Subsection (d)(6) without complying with Subsection (a) or (b) to the extent the professional, in the exercise of professional judgment, determines that the requirements interfere with the professional's ability to respond to the disaster.

(f)  A professional may disclose a deceased patient's confidential information to a person described by Subsection (d) who is involved in the patient's care or with payment of the patient's health care that is relevant to the recipient's involvement unless the patient informed the professional that the patient preferred that the information not be disclosed.

Sec. 611.0042.  CONSTRUCTION OF AUTHORIZED DISCLOSURE PROVISIONS. The authorization to disclose confidential information described by Sections 611.004 and 611.0041 may not be construed to create an independent duty or requirement to disclose the information.

SECTION 5.  Section 159.004, Occupations Code, is amended to read as follows:

Sec. 159.004.  EXCEPTIONS TO CONFIDENTIALITY IN OTHER SITUATIONS. (a) An exception to the privilege of confidentiality in a situation other than a court or administrative proceeding, allowing disclosure of confidential information by a physician, exists only with respect to the following:

(1)  a governmental agency, if the disclosure is required or authorized by law;

(2)  a person reasonably able to prevent or mitigate a threat, including the subject of the threat [~~medical or law enforcement personnel~~], if the physician, in good faith, believes [~~determines~~] that disclosure is necessary to prevent or mitigate a serious and [~~there is a probability of:~~

[~~(A)~~] imminent threat [~~physical injury~~] to the health or safety of a [~~patient, the physician, or another~~] person or the public [~~; or~~

[~~(B) immediate mental or emotional injury to the patient~~];

(3)  qualified personnel for research or for a management audit, financial audit, or program evaluation, but the personnel may not directly or indirectly identify a patient in any report of the research, audit, or evaluation or otherwise disclose identity in any manner;

(4)  those parts of the medical records reflecting specific services provided if necessary in the collection of fees for medical services provided by a physician, professional association, or other entity qualified to provide or arrange for medical services;

(5)  a person who has consent, as provided by Section 159.005;

(6)  a person, corporation, or governmental agency involved in the payment or collection of fees for medical services provided by a physician;

(7)  another physician or other personnel acting under the direction of the physician who participate in the diagnosis, evaluation, or treatment of the patient;

(8)  an official legislative inquiry regarding state hospitals or state schools, if:

(A)  information or a record that identifies a patient or client is not released for any purpose unless proper consent to the release is given by the patient; and

(B)  only records created by the state hospital or school or its employees are included; [~~or~~]

(9)  health care personnel of a penal or other custodial institution in which the patient is detained if the disclosure is for the sole purpose of providing health care to the patient; or

(10)  a person in accordance with Section 159.0043.

(b)  A physician who discloses confidential information under Subsection (a)(2) is presumed to have acted in good faith with regard to a belief described by that subsection if the belief is based on the physician's actual knowledge or in reliance on a credible representation by a person with apparent knowledge or authority.

SECTION 6.  Chapter 159, Occupations Code, is amended by adding Sections 159.0043 and 159.0047 to read as follows:

Sec. 159.0043.  DISCLOSURE OF CONFIDENTIAL INFORMATION FOR NOTICE AND PATIENT'S CARE. (a) For a patient who is available and has the capacity to make health care decisions, a physician may disclose confidential information in accordance with this section if the physician:

(1)  obtains the patient's consent;

(2)  provides the patient with the opportunity to object to the disclosure, and the patient does not object; or

(3)  reasonably infers from the circumstances, based on the exercise of professional judgment, that the patient does not object to the disclosure.

(b)  For a patient who is not available or for whom the opportunity to consent or for objection to the use or disclosure under Subsection (a) cannot practicably be provided because of the patient's incapacity or an emergency, a physician may, in the exercise of professional judgment, determine whether the disclosure is in the best interests of the patient and disclose the patient's confidential information in accordance with this section if determined to be in the patient's best interests.

(c)  A physician authorized to disclose confidential information under this section may only disclose a patient's confidential information that, in the exercise of professional judgment, is directly relevant to:

(1)  the recipient's involvement with the patient's health care, including obtaining prescriptions, medical supplies, test results, or other similar forms of confidential information;

(2)  the recipient's involvement with payment for the patient's health care; or

(3)  notification to the patient's family member, the patient's legally authorized representative, or a person responsible for the patient's care of the patient's location, general condition, or death.

(d)  A physician may disclose a patient's confidential information under this section only to:

(1)  the patient's relative;

(2)  the patient's close personal friend;

(3)  a person identified by the patient to receive the disclosure;

(4)  the patient's legally authorized representative;

(5)  a person responsible for the patient's care; or

(6)  a governmental or private entity authorized by law to assist in disaster relief efforts for the purpose described by Subsection (c)(3).

(e)  A physician may disclose a patient's confidential information to a person described by Subsection (d)(6) without complying with Subsection (a) or (b) to the extent the physician, in the exercise of professional judgment, determines that the requirements interfere with the physician's ability to respond to the disaster.

(f)  A physician may disclose a deceased patient's confidential information to a person described by Subsection (d) who is involved in the patient's care or with payment of the patient's health care that is relevant to the recipient's involvement unless the patient informed the physician that the patient preferred that the information not be disclosed.

Sec. 159.0047.  CONSTRUCTION OF AUTHORIZED DISCLOSURE PROVISIONS. The authorization to disclose confidential information described by Sections 159.003, 159.004, and 159.0043 may not be construed to create an independent duty or requirement to disclose the information.

SECTION 7.  The change in law made by this Act applies only to confidential information provided on or after the effective date of this Act. Confidential information provided before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 8.  This Act takes effect September 1, 2019.