

1 AN ACT relating to confidentiality of mental health records.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 403 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) When a release of medical records, including mental health records of either*  
6 *party to a divorce or custody proceeding under this chapter, is tendered pursuant*  
7 *to the Family Court Rules of Practice and Procedure (FCRPP), those records*  
8 *shall be delivered pursuant to the FCRPP guidelines.*

9 *(2) In the event either party objects to signing a release related to production of his*  
10 *or her medical or mental health records, an individual with a legally recognized*  
11 *interest in the disclosures sought may request an order authorizing the disclosure*  
12 *of a party's medical or mental health records. The request shall:*

13 *(a) Use initials only to refer to any patient; and*

14 *(b) Not contain or otherwise disclose any patient-identifying information unless*  
15 *the:*

16 *1. Patient is the applicant;*

17 *2. Patient has given written consent to disclose; or*

18 *3. Court has ordered the record of the proceeding sealed from the public.*

19 *(3) The patient and the person holding the records from whom disclosure is sought*  
20 *shall be provided:*

21 *(a) Adequate notice in a manner that does not disclose patient-identifying*  
22 *information to other persons; and*

23 *(b) An opportunity to file a written response to the request, or to appear in*  
24 *person, for the limited purpose of providing evidence on the statutory and*  
25 *regulatory criteria for the issuance of the court order as described in*  
26 *subsection (5) of this section.*

27 *(4) Unless the patient requests an open hearing, any oral argument, review of*

1 evidence, or hearing on the request shall be held in the judge's chambers or in  
 2 some manner which ensures that patient-identifying information is not disclosed  
 3 to anyone other than a party to the proceeding, the patient, or the person holding  
 4 the record. The proceeding may include an examination by the judge of the  
 5 patient records referred to in the request.

6 (5) An order under subsection (2) of this section shall be entered only if the court  
 7 finds that:

8 (a) Other ways of obtaining the information are not available or would not be  
 9 effective; and

10 (b) The public interest and need for the disclosure outweigh the potential injury  
 11 to the patient, the physician-patient relationship, and the treatment services.

12 (6) All medical and mental health records used in proceedings under this chapter  
 13 shall be accompanied by an order which shall:

14 (a) Limit disclosure to those parts of the patient's record which are essential to  
 15 fulfill the objective of the order;

16 (b) Limit disclosure to those persons whose need for information is the basis for  
 17 the order; and

18 (c) Include other measures as are necessary to limit disclosure for the  
 19 protection of the patient, the physician-patient relationship, and the  
 20 treatment services, such as:

21 1. Limiting viewing of the records to in camera inspection;

22 2. Restricting discussion of the content of the medical or mental health  
 23 records with anyone who is not a party to the case;

24 3. Restricting copying, photographing, or otherwise duplicating records;  
 25 and

26 4. Sealing the record.

27 (7) A violation of an order entered under this section may subject the offender to the

1        contempt powers of the court.

2        (8) Nothing in this section shall be construed to restrict treatment providers or other  
3        professionals involved in a court proceeding from collaborating or consulting  
4        with one another or any other individual involved in the proceeding from  
5        reporting a legitimate safety concern or incident of abuse to the appropriate  
6        authorities.