

CHAPTER 59

(SB 203)

AN ACT relating to privacy.

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

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

- (1) *When a release of medical records, including mental health records of either party to a divorce or custody proceeding under this chapter, is tendered pursuant to the Family Court Rules of Practice and Procedure (FCRPP), those records shall be delivered pursuant to the FCRPP guidelines.*
- (2) *In the event either party objects to signing a release related to production of his or her medical or mental health records, an individual with a legally recognized interest in the disclosures sought may request an order authorizing the disclosure of a party's medical or mental health records. The request shall:*
 - (a) *Use initials only to refer to any patient; and*
 - (b) *Not contain or otherwise disclose any patient-identifying information unless the:*
 1. *Patient is the applicant;*
 2. *Patient has given written consent to disclose; or*
 3. *Court has ordered the record of the proceeding sealed from the public.*
- (3) *The patient and the person holding the records from whom disclosure is sought shall be provided:*
 - (a) *Adequate notice in a manner that does not disclose patient-identifying information to other persons; and*
 - (b) *An opportunity to file a written response to the request, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order as described in subsection (5) of this section.*
- (4) *Unless the patient requests an open hearing, any oral argument, review of evidence, or hearing on the request shall be held in the judge's chambers or in some manner which ensures that patient-identifying information is not disclosed to anyone other than a party to the proceeding, the patient, or the person holding the record. The proceeding may include an examination by the judge of the patient records referred to in the request.*
- (5) *An order under subsection (2) of this section shall be entered only if the court finds that:*
 - (a) *Other ways of obtaining the information are not available or would not be effective; and*
 - (b) *The public interest and need for the disclosure outweigh the potential injury to the patient, the physician-patient relationship, and the treatment services.*
- (6) *All medical and mental health records used in proceedings under this chapter shall be accompanied by an order which shall:*
 - (a) *Limit disclosure to those parts of the patient's record which are essential to fulfill the objective of the order;*
 - (b) *Limit disclosure to those persons whose need for information is the basis for the order; and*
 - (c) *Include other measures as are necessary to limit disclosure for the protection of the patient, the physician-patient relationship, and the treatment services, such as:*
 1. *Limiting viewing of the records to in camera inspection;*
 2. *Restricting discussion of the content of the medical or mental health records with anyone who is not a party to the case;*
 3. *Restricting copying, photographing, or otherwise duplicating records; and*
 4. *Sealing the record.*

- (7) *A violation of an order entered under this section may subject the offender to the contempt powers of the court.*
- (8) *Nothing in this section shall be construed to restrict treatment providers or other professionals involved in a court proceeding from collaborating or consulting with one another or any other individual involved in the proceeding from reporting a legitimate safety concern or incident of abuse to the appropriate authorities.*

➔Section 2. 2023 RS SB 62/EN is hereby amended to read as follows:

On page 3, line 1, after "*person*", insert "*not*".

Signed by Governor March 22, 2023.