

The DC Psychological Association is dedicated to the promotion of the best care for our patients. To that end we are providing an information alert regarding a group of psychologists in the area who are opposed to legislation they insist would weaken the current Mental Health Information Act of DC and thus violate the rights of patient confidentiality. The group makes an appeal for urgent action in various ways, including signing on to a letter to express opposition.

DCPA Executive Board is currently studying the matter more thoroughly and has at present not taken a position. As a service to you, our constituents, we are simply providing an information alert regarding this proposed legislative activity. We look forward to hearing your opinions pros and cons regarding computerized patient health information sharing. Please contact us with your comments at DCPAboard@reisman-white.com.

Below is the urgent and important letter to DC psychologists from Dr. Barry Landau and others sent to us with an email heading entitled Proposed Legislation to Weaken the Mental Health Information Act of DC.

LETTER TO COLLEAGUES:

The proposed legislation would permit specified categories of information from mental health treatments to be placed on computerized "health information exchanges." Active patient consent would not be required. Patients would instead be advised of the policy of "sharing" information with the health information exchange (HIE) and offered the option to "opt-out." If the patient did not request to "opt out," then the specified categories of information could be "shared" with the HIE at any future time, without further discussion with the patient. This would not only pose a threat to the confidentiality of patients in DC but, since the DC law has in a number of ways been a model for the country, this could also have wider implications.

Our intention in sending this email is to raise your consciousness about the issues and to invite you to respond by:

1. Reply to this email and ask that your name be included as "signing-on" to the letter we will send to Mr. David Catania, Chair of the DC Council Committee on Health. Do provide us with your name, address, and any institutional affiliation. The letter, a six point "Statement of Concern" is pasted on this email below and also attached.

Or,

2. Go to the web page we've created:

<http://www.psychsense.net/DC%20Privacy.htm> and use the mechanisms spelled out there to reply in your own words. Mr. Catania's address is there and there is also a sample email we've crafted for convenience, "Dear Mr. Catania," Feel free to modify it. The website is a compilation of facts about the proposed statute. It includes additional resources on privacy protection and electronic data sharing vulnerabilities.

Please consider sending a letter to Mr. Catania indicating your thoughts and feelings about the proposed law. We're glad to discuss this with you. Write any of us at:
r.a.chefetz@psychsense.net
barryjlandau@verizon.net
ddrakephd@verizon.net.

Please also circulate this message with other individuals or organizations that you think might be interested in this matter and possibly be willing to sign on to this letter. (Our 6-point discussion of reasons for our opposition to the proposed law is attached to, and pasted to the bottom of, this email.)

Statement of Concern re Proposed "Mental Health Information and Primary Care Integration Act"

The protection of confidentiality and privacy of mental health information for citizens of The District of Columbia is at risk. We stand at a critical juncture between protection of patient confidentiality and privacy vs. the "sharing" of information from mental health records via electronic "Health Information Exchanges (HIEs)." This sharing would be permitted under proposed amendments to the Mental Health Information Act, which has long been a bulwark for protecting patient confidentiality. The amendments are embodied in a bill called, "The Mental Health Information and Primary Care Integration Act," which emphasizes the goal of improving treatment by sharing mental health information with primary care providers.

We oppose the proposed amendments for the following reasons:

1. The fundamental issue is the confidentiality of mental health treatments, which has long been recognized to be a necessary condition that makes psychotherapeutic treatments possible. The Mental Health Information Act of DC has served to protect the confidentiality of patients in mental health treatments in the District of Columbia and, in a significant number of ways, has been a model for the country. We believe the proposed amendment severely weakens this model statute.
2. The proposal to allow sharing of information among those providing care is well intentioned and especially applicable in the treatment of severely ill patients. However, the degree of sharing with "health care providers" permitted by the proposed amendments is so broad that it fundamentally and radically changes the concept of confidentiality to render it virtually meaningless. (Please see the attachment for the definition of "health care provider").

3. The “opt-out” provision of the proposed amendment means that mental health information could be shared without a process of active, informed consent regarding patients’ private mental health records. Any anticipated gain resulting from the ability to use computerized systems to share information among “health care providers” would likely be offset by decreased access to care for potential patients who fear lack of privacy of their personal mental health information.

4. The “opt-out” provision of the proposed amendment also clashes with the premise underlying the United States Supreme Court *Jaffee v. Redmond* decision in 1996, which established an absolute psychotherapist-patient privilege in federal courts. In establishing this privilege, the Justices explained the reasons for providing mental health treatments with a degree of confidentiality and privacy not accorded to general medical treatments. Sharing of information with health information exchanges, which would combine information from mental health treatments with those from general medical treatments, could undermine the basis for the psychotherapist-patient privilege.

5. Computerized networks are not capable of keeping patient information secure. Given this fact, we can ill afford to add private mental health information to these systems. For example, in just the two years since the HITECH Act’s breach notice law went into effect, 11.5 million Americans have had their health information privacy breached. A particularly alarming breach was recently reported, involving Stanford University Hospital in California, where patients’ private information, placed on a computerized health record system, was improperly available outside the system for a period of six months. Such a security breach here would have a chilling effect on patients’ willingness to seek psychiatric treatment, and to provide information necessary for the treatment if they did seek it.

6. It was also recently reported that the Department of Defense is being sued for \$4.9 billion dollars due to an electronic health information privacy breach of 4.9 million records by a Tricare contractor (*Computer World*, Oct 14, 2001). Such a suit here would have a devastating effect on the ability of the District of Columbia to provide needed treatment for its citizens. One issue that would inevitably come up in such a suit is that of whether the patients had been sufficiently informed about the risks associated with having information placed on a computerized network and whether the patients had given consent. It is not clear whether the court would view the “opt out” system, mandated in the proposed legislation, as having met these criteria.

For these reasons, we urge the Committee on Health of the DC Council to reconsider its support for the proposed amendments. Of course, there can be great value when information is properly shared among those providing care to patients. While current systems of obtaining informed consent for mental health records may feel cumbersome in comparison to an automated system, there is a serious risk to the privacy and confidentiality in maintaining mental health information in electronic networks. We believe the proposed amendments would compromise the privacy and confidentiality of mental health records and discourage people from seeking treatment. When sharing information from mental health treatments is needed for optimal patient care, we urge

that a more focused and less global solution be found that does not potentially compromise the privacy and confidentiality of mental health records in the District of Columbia.