

SENATE BILL 540

By Lundberg

AN ACT to amend Tennessee Code Annotated, Title 29;
Title 33; Title 63 and Title 68, relative to mental
health disorders.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, Part 2 is amended by adding the following as a new section:

(a) For the purposes of this section, "mental health disorder" means a serious psychological condition, including, but not limited to, major depressive disorder, anxiety disorder, bipolar disorder, personality disorder,, and post-traumatic stress disorder.

(b)

(1) A consumer is entitled to care from a competently qualified person when receiving care for a mental health disorder.

(2) A license is required under title 63 for a person to competently treat mental health disorders. An unlicensed person is not competent to provide psychotherapy services for treatment of mental health disorders.

(3) An unlicensed person who provides mental health psychotherapy services shall provide to the client for the client's review and signature, a statement acknowledging the unlicensed status of the provider.

(c)

(1) An unlicensed person may be civilly liable to the client if the unlicensed person knowingly offered mental health psychotherapy to treat a mental health disorder without being licensed as a mental health provider.

(2) The client may maintain an action to recover damages, the consideration paid to the unlicensed provider, costs in recovering consideration paid, and three times reasonable attorney's fees as determined by the court.

(3) An unlicensed person acting as a licensed mental health provider or treating a mental health disorder for direct or indirect compensation is held to the same ethical and professional standard of care as a licensed mental health professional.

(d) The following persons are exempt from this section:

(1) Clergy who are not being compensated on a fee-for-service basis;

(2) Students and practitioners in training when the student or practitioner is under the lawful supervision of a licensed healthcare professional;

(3) Persons holding a license under title 63 when acting within the lawful scope of practice;

(4) An unlicensed person operating under the supervision of a person holding a license under title 63, providing counseling or therapy services in a correctional facility;

(5) Any service provider at a homeless shelter, residential facility, hospital, or any state-operated agency or facility; and

(6) Any person providing peer counseling or social services not on a fee-for-service basis.

(e) This section does not expand or restrict the scope of practice for any person holding a license under title 63.

(f) If an unlicensed person offering mental health psychotherapy services on a fee-for-service basis can produce a copy of the client statement for unlicensed therapist signed by the client, there shall be a rebuttable presumption that the services were not offered to treat a mental health disorder.

(g) If an unlicensed person offering mental health psychotherapy services on a fee-for-service basis cannot produce a copy of the client statement for unlicensed therapist signed by the client, there shall be a rebuttable presumption that the services were offered to treat a mental health disorder.

(h) The client statement for unlicensed therapist shall contain the following language:

CLIENT STATEMENT FOR UNLICENSED THERAPIST

I know that _____ (unlicensed therapist) providing services to me is NOT authorized by the state of Tennessee to diagnose, prevent, or treat a mental health condition that requires a license to diagnose and treat. Because the provider is not licensed, I know:

- The provider is not authorized to diagnose or treat a condition that requires a license to treat, including, but not limited to, major depression, bipolar disorder, anxiety disorder, personality disorder, and other mental health disorders;
- The provider has not undergone a background check by state authorities regarding criminal histories;
- The provider has no legal requirements to maintain ongoing professional education to ensure competence;
- The provider can be subpoenaed to testify about me in a court of law without my permission;
- The provider's records may be used against me in a court of law;
- The provider may be able to talk about my treatment with others without my consent and with no consequences;
- An employer may be able to request, demand, or obtain a copy of my records without my consent; and

- A prosecuting attorney or grand jury may be able to obtain a copy of my records as part of a criminal investigation.

Having been informed of the information herein, I agree to be counseled by the above provider.

Client Name

Today's Date

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.