

Stakeholder Draft

February 3, 2017

Uses and Disclosures of Protected Health Information to Avert a Serious and Imminent Threat to Health or Safety

1 Statement of purpose of bill: This bill proposes to clarify when mental health professionals
2 must exercise reasonable care to avert a serious and imminent threat to health or safety

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4 An act relating to uses and disclosures of protected health information to avert a serious and
5 imminent threat to health or safety

6 It is hereby enacted by the General Assembly of the State of Vermont:

7 Sec. 1. LEGISLATIVE INTENT

8 It is the intent of the General Assembly in this act to overrule the Vermont Supreme Court's
9 decision in Kuligoski v. Brattleboro Retreat, 2016 VT 54A. In this act, the General Assembly
10 responds to the Kuligoski decision by clarifying that a mental health professionals' duty to warn
11 is established in common law and requires mental health professionals to exercise reasonable
12 care to protect reasonably identifiable person or persons where the mental health professional
13 determines, or based on the standards of the mental health profession should have determined,
14 that the client or patient poses a serious and imminent risk of danger to such reasonably
15 identifiable person or persons. Mental health professionals are not otherwise required to train or
16 advise caregivers or to take other precautions to protect an unidentifiable person or persons or
17 property from a risk a client or patient may pose.

18 Sec. 2. 18 V.S.A. § 8112 is added to read:

19 § 8112 USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION TO
20 AVERT A SERIOUS AND IMMINENT THREAT TO HEALTH OR SAFETY

21 (a) No cause of action shall arise against any mental health professional as defined in 18
22 VSA § 7101 (13) for failing to warn, notify, train or counsel the caretakers of a patient or client

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1 about risks a patient or client may pose, or for failing to take other precautions to protect an
2 unidentifiable person or persons or property from risks a client or patient may pose. This section
3 does not relieve a mental health professional from the common law duty to exercise reasonable
4 care to protect reasonably identifiable person or persons where the mental health professional
5 determines, or based on the standards of the mental health profession should have determined,
6 that the client or patient poses a serious and imminent risk of danger to such reasonably
7 identifiable person or persons.

8 (b) This section creates no cause of action.

9 Sec. 3. EFFECTIVE DATE

10 This act shall take effect on passage.

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