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OF THE PHILIPPINES)
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SENATE
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Introduced by Senator Miriam Defensor Santiago

EXPLANATORY NOTE

The Constitution provides that:

Article II, Section 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

Article XIII, Section 11. The State shall adopt an integrated and comprehensive approach to health development -xxx- There shall be priority for the needs of the underprivileged, sick, elderly, disabled, women, and children.

The right to health necessarily includes the right of every person to make health care decisions. A patient must have the right to consent to or refuse any medical care and treatment, unless care is ordered by a court. This requirement applies to all adult patients no matter what their medical condition.

An aspect of health which has not been given much priority is mental health. Problems in this area include depression, bipolar disorder (manic-depressive illness), attention-deficit/hyperactivity disorder, anxiety disorders and conduct disorder. A person with mental health problems may be considered disabled, and such disability may reach a stage severe enough as to require inpatient hospitalization.

Professional mental health services are valuable in assisting those who are afflicted with these conditions toward recovery and assimilation in society. However, in a study conducted by the United Nations on issues of mental health, it was found that such institution-based mental health care lead to a loss of social skills, excessive restriction, human rights violations, dependency and reduced opportunities for rehabilitation.

The World Health Organization outlines five (5) general principles for mental health legislation to protect the rights of the mentally ill:

- Respect for individuals and their social, cultural, ethnic, religious, and philosophical values;

- Individual's needs taken fully into account. For this to happen, there must be close liaison between health, housing and social care services;

- Care and treatment provided in the least restrictive environment. This should assert that involuntary hospital admission is a last resort;

- Provision of care and treatment aimed at promoting each individual's self-determination and personal responsibility. It is vital that individuals are given the opportunity to exercise choice and make decisions about their own care and treatment; and

- Provision of care and treatment aimed at achieving the individual's own highest attainable level of health and well-being.

The objectives of this bill are to decrease the powerlessness of mental health patients and provide them with social protection during their vulnerable mental state, while undergoing treatment within an institution or as outpatients.*

Miriam Defensor Santiago
MIRIAM DEFENSOR SANTIAGO
Def

* This bill was originally filed during the Thirteenth Congress, First Regular Session.

1 (C) The right to ongoing participation, in a manner appropriate to such person's
2 capabilities, in the planning of mental health services to be provided such person, including the
3 right to participate in the development and periodic revision of the plan described in subsection
4 (B), and, in connection with such participation, the right to be provided with a reasonable
5 explanation, in terms and language appropriate to such person's condition and ability to
6 understand, of—

7 (1) Such person's general mental condition and, if such program or facility has
8 provided a physical examination, such person's general physical condition;

9 (2) The objectives of treatment;

10 (3) The nature and significant possible adverse effects of recommended
11 treatments;

12 (4) The reasons why a particular treatment is considered appropriate;

13 (5) The reasons why access to certain visitors may not be appropriate; and

14 (6) Any appropriate and available alternative treatments, services, and types of
15 providers of mental health services.

16 (D) The right not to receive a mode or course of treatment, established pursuant to the
17 treatment plan, in the absence of such person's informed, voluntary, written consent to such
18 mode or course of treatment, except treatment—

19 (1) During an emergency situation, if such treatment is pursuant to or documented
20 contemporaneously by the written order of a responsible mental health professional; or

21 (2) As permitted under applicable law in the case of a person committed by a
22 court to a treatment program or facility.

23 (E) The right not to participate in experimentation in the absence of such person's
24 informed, voluntary, written consent, the right to appropriate protections in connection with such
25 participation, including the right to a reasonable explanation of the procedure to be followed, the
26 benefits to be expected, the relative advantages of alternative treatments, and the potential
27 discomforts and risks, and the right and opportunity to revoke such consent.

28 (F) The right to freedom from restraint or seclusion, other than as a mode or course of
29 treatment or restraint or seclusion during an emergency situation if such restraint or seclusion is

1 pursuant to or documented contemporaneously by the written order of a responsible mental
2 health professional.

3 (G) The right to a humane treatment environment that affords reasonable protection from
4 harm and appropriate privacy to such person with regard to personal needs.

5 (H) The right to confidentiality of such person's records.

6 (I) The right to access, upon request, to such person's mental health care records, except
7 such person may be refused access to—

8 (1) Information in such records provided by a third party under assurance that
9 such information shall remain confidential; and

10 (2) Specific material in such records if the health professional responsible for the
11 mental health services concerned has made a determination in writing that such access
12 would be detrimental to such person's health, except that such material may be made
13 available to a similarly licensed health professional selected by such person and such
14 health professional may, in the exercise of professional judgment, provide such person
15 with access to any or all parts of such material or otherwise disclose the information
16 contained in such material to such person.

17 (J) The right, in the case of a person admitted on a residential or inpatient care basis, to
18 converse with others privately, to have convenient and reasonable access to the telephone and
19 mails, and to see visitors during regularly scheduled hours, except that, if a mental health
20 professional treating such person determines that denial of access to a particular visitor is
21 necessary for treatment purposes, such mental health professional may, for a specific, limited,
22 and reasonable period of time, deny such access if such mental health professional has ordered
23 such denial in writing and such order has been incorporated in the treatment plan for such
24 person. An order denying such access should include the reasons for such denial.

25 (K) The right to be informed promptly at the time of admission and periodically
26 thereafter, in language and terms appropriate to such person's condition and ability to
27 understand, of the rights described in this section.

1 (L) The right to assert grievances with respect to infringement of the rights described in
2 this section, including the right to have such grievances considered in a fair, timely, and impartial
3 grievance procedure provided for or by the program or facility.

4 (M) Notwithstanding subsection (J), and for the purpose of receiving assistance to
5 understand, exercise, and protect the rights described in this section and in other provisions of
6 law, the right of access to, including the opportunities and facilities for private communication
7 with, any available—

8 (1) Legal protection service within the program or facility, or within the mental
9 health system designed to be available to such person; and

10 (2) *Qualified advocate*;

11 (N) The right to exercise the rights described in this section without reprisal, including
12 reprisal in the form of denial of any appropriate, available treatment.

13 (O) The right to referral as appropriate to other providers of mental health services upon
14 discharge.

15 SECTION 4. *Applicability to Other Provisions.* –

16 (A) The rights described in this Section 2 should be in addition to and not in derogation
17 of any other statutory or constitutional rights.

18 (B) The rights to confidentiality of and access to records as provided in Section (3)(H)
19 and (I) should remain applicable to records pertaining to a person after such person's discharge
20 from a program or facility.

21 SECTION 5. *Protection of Rights.* –

22 (A) No otherwise eligible person should be denied admission to a program or facility for
23 mental health services as a reprisal for the exercise of the rights described in Section 3.

24 (B) Nothing in this Act should—

25 (1) Obligate an individual mental health or health professional to administer
26 treatment contrary to such professional's clinical judgment;

27 (2) Prevent any program or facility from discharging any person for whom the
28 provision of appropriate treatment, consistent with the clinical judgment of the mental

1 health professional primarily responsible for such person's treatment, is or has become
2 impossible as a result of such person's refusal to consent to such treatment;

3 (3) Require a program or facility to admit any person who, while admitted on
4 prior occasions to such program or facility, has repeatedly frustrated the purposes of such
5 admissions by withholding consent to proposed treatment; or

6 (4) Obligate a program or facility to provide treatment services to any person who
7 is admitted to such program or facility solely for diagnostic or evaluative purposes.

8 (C) In order to assist a person admitted to a program or facility in the exercise or
9 protection of such person's rights, such person's attorney or legal representatives should have
10 reasonable access to:

11 (1) Such person;

12 (2) The areas of the program or facility where such person has received treatment,
13 resided, or had access; and

14 (3) Pursuant to the written authorization of such person, the records and
15 information pertaining to such person's diagnosis, treatment, and related services
16 described in subsection (9) of Section 3.

17 (D) Each program and facility should post a notice listing and describing, in language and
18 terms appropriate to the ability of the persons to whom such notice is addressed to understand,
19 the rights described in this section of all persons admitted to such program or facility. Each such
20 notice should conform to the format and content for such notices, and should be posted in all
21 appropriate locations.

22 SECTION 6. *Exercise of Rights.* --

23 (A) In the case of a person adjudicated by a court of competent jurisdiction as being
24 incompetent to exercise the right to consent to treatment or experimentation described in Section
25 (3)(D) and (E), or the right to confidentiality of or access to records described in Sections (3)(H)
26 and (I), or to provide authorization, such right may be exercised or such authorization may be
27 provided by the individual appointed by such court as such person's guardian or representative
28 for the purpose of exercising such right or such authorization.

1 (B) In the case of a person who lacks capacity to exercise the right to consent to treatment
2 or experimentation under Sections (3)(D) and (E), or the right to confidentiality of or access to
3 records described in Section (3)(H) or (I), or to provide authorization, because such person has
4 not attained an age considered sufficiently advanced under the law to permit the exercise of such
5 right or such authorization to be legally binding, such right may be exercised or such
6 authorization may be provided on behalf of such person by a parent or legal guardian of such
7 person.

8 (C) Notwithstanding subsections (A) and (B), in the case of a person admitted to a
9 program or facility for the purpose of receiving mental health services, no individual employed
10 by or receiving any remuneration from such program or facility should act as such person's
11 guardian or representative.

12 SECTION 7. *Separability Clause.* – If any provision of this Act is held invalid or
13 unconstitutional, the remainder of the Act or the provision not otherwise affected shall remain
14 valid and subsisting.

15 SECTION 8. *Repealing Clause.* – Any law, presidential decree or issuance, executive
16 order, letter of instruction, administrative rule or regulation contrary to or inconsistent with the
17 provisions of this Act is hereby repealed, modified or amended accordingly.

18 SECTION 9. *Effectivity Clause.* – This Act shall take effect fifteen (15) days after its
19 publication in at least two newspapers of general circulation.

20 Approved,