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SENATE BILL 6438

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State of Washington

56th Legislature

2000 Regular Session

By Senators Hargrove, Long and Sheahan; by request of Department of Social and Health Services

Read first time 01/17/2000. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to records that are accessible by the department of  
2 social and health services; amending RCW 71.34.200 and 70.02.050;  
3 reenacting and amending RCW 26.44.030; adding a new section to chapter  
4 26.44 RCW; and adding a new section to chapter 74.13 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 26.44 RCW  
7 to read as follows:

8 For the purposes of case planning and obtaining medical care for a  
9 child placed under the care and supervision of the department under an  
10 order entered in a proceeding under chapter 13.34 RCW, a child in need  
11 of services proceeding under chapter 13.32A RCW, or a voluntary  
12 placement agreement executed by the child's parent, legal custodian, or  
13 legal guardian, the department shall have access to all medical, mental  
14 health, counseling, and educational records for the child from birth to  
15 present to the same extent that the child's parent, legal custodian, or  
16 legal guardian has access to such records. No provider may be held  
17 responsible for information subsequently used or disseminated by the  
18 department as stated in RCW 26.44.030 (7) or (9).

1       **Sec. 2.** RCW 26.44.030 and 1999 c 267 s 20 and 1999 c 176 s 30 are  
2 each reenacted and amended to read as follows:

3       (1)(a) When any practitioner, county coroner or medical examiner,  
4 law enforcement officer, professional school personnel, registered or  
5 licensed nurse, social service counselor, psychologist, pharmacist,  
6 licensed or certified child care providers or their employees, employee  
7 of the department, juvenile probation officer, placement and liaison  
8 specialist, responsible living skills program staff, HOPE center staff,  
9 or state family and children's ombudsman or any volunteer in the  
10 ombudsman's office has reasonable cause to believe that a child has  
11 suffered abuse or neglect, he or she shall report such incident, or  
12 cause a report to be made, to the proper law enforcement agency or to  
13 the department as provided in RCW 26.44.040.

14       (b) The reporting requirement also applies to department of  
15 corrections personnel who, in the course of their employment, observe  
16 offenders or the children with whom the offenders are in contact. If,  
17 as a result of observations or information received in the course of  
18 his or her employment, any department of corrections personnel has  
19 reasonable cause to believe that a child has suffered abuse or neglect,  
20 he or she shall report the incident, or cause a report to be made, to  
21 the proper law enforcement agency or to the department as provided in  
22 RCW 26.44.040.

23       (c) The reporting requirement shall also apply to any adult who has  
24 reasonable cause to believe that a child who resides with them, has  
25 suffered severe abuse, and is able or capable of making a report. For  
26 the purposes of this subsection, "severe abuse" means any of the  
27 following: Any single act of abuse that causes physical trauma of  
28 sufficient severity that, if left untreated, could cause death; any  
29 single act of sexual abuse that causes significant bleeding, deep  
30 bruising, or significant external or internal swelling; or more than  
31 one act of physical abuse, each of which causes bleeding, deep  
32 bruising, significant external or internal swelling, bone fracture, or  
33 unconsciousness.

34       (d) The report must be made at the first opportunity, but in no  
35 case longer than forty-eight hours after there is reasonable cause to  
36 believe that the child has suffered abuse or neglect. The report must  
37 include the identity of the accused if known.

38       (2) The reporting requirement of subsection (1) of this section  
39 does not apply to the discovery of abuse or neglect that occurred

1 during childhood if it is discovered after the child has become an  
2 adult. However, if there is reasonable cause to believe other children  
3 are or may be at risk of abuse or neglect by the accused, the reporting  
4 requirement of subsection (1) of this section does apply.

5 (3) Any other person who has reasonable cause to believe that a  
6 child has suffered abuse or neglect may report such incident to the  
7 proper law enforcement agency or to the department of social and health  
8 services as provided in RCW 26.44.040.

9 (4) The department, upon receiving a report of an incident of  
10 alleged abuse or neglect pursuant to this chapter, involving a child  
11 who has died or has had physical injury or injuries inflicted upon him  
12 or her other than by accidental means or who has been subjected to  
13 alleged sexual abuse, shall report such incident to the proper law  
14 enforcement agency. In emergency cases, where the child's welfare is  
15 endangered, the department shall notify the proper law enforcement  
16 agency within twenty-four hours after a report is received by the  
17 department. In all other cases, the department shall notify the law  
18 enforcement agency within seventy-two hours after a report is received  
19 by the department. If the department makes an oral report, a written  
20 report must also be made to the proper law enforcement agency within  
21 five days thereafter.

22 (5) Any law enforcement agency receiving a report of an incident of  
23 alleged abuse or neglect pursuant to this chapter, involving a child  
24 who has died or has had physical injury or injuries inflicted upon him  
25 or her other than by accidental means, or who has been subjected to  
26 alleged sexual abuse, shall report such incident in writing as provided  
27 in RCW 26.44.040 to the proper county prosecutor or city attorney for  
28 appropriate action whenever the law enforcement agency's investigation  
29 reveals that a crime may have been committed. The law enforcement  
30 agency shall also notify the department of all reports received and the  
31 law enforcement agency's disposition of them. In emergency cases,  
32 where the child's welfare is endangered, the law enforcement agency  
33 shall notify the department within twenty-four hours. In all other  
34 cases, the law enforcement agency shall notify the department within  
35 seventy-two hours after a report is received by the law enforcement  
36 agency.

37 (6) Any county prosecutor or city attorney receiving a report under  
38 subsection (5) of this section shall notify the victim, any persons the  
39 victim requests, and the local office of the department, of the

1 decision to charge or decline to charge a crime, within five days of  
2 making the decision.

3 (7) The department may conduct ongoing case planning and  
4 consultation with those persons or agencies required to report under  
5 this section, with consultants designated by the department, and with  
6 designated representatives of Washington Indian tribes if the client  
7 information exchanged is pertinent to cases currently receiving child  
8 protective services. Upon request, the department shall conduct such  
9 planning and consultation with those persons required to report under  
10 this section if the department determines it is in the best interests  
11 of the child. Information considered privileged by statute and not  
12 directly related to reports required by this section must not be  
13 divulged without a valid written waiver of the privilege.

14 (8) Any case referred to the department by a physician licensed  
15 under chapter 18.57 or 18.71 RCW on the basis of an expert medical  
16 opinion that child abuse, neglect, or sexual assault has occurred and  
17 that the child's safety will be seriously endangered if returned home,  
18 the department shall file a dependency petition unless a second  
19 licensed physician of the parents' choice believes that such expert  
20 medical opinion is incorrect. If the parents fail to designate a  
21 second physician, the department may make the selection. If a  
22 physician finds that a child has suffered abuse or neglect but that  
23 such abuse or neglect does not constitute imminent danger to the  
24 child's health or safety, and the department agrees with the  
25 physician's assessment, the child may be left in the parents' home  
26 while the department proceeds with reasonable efforts to remedy  
27 parenting deficiencies.

28 (9) Persons or agencies exchanging information under subsection (7)  
29 of this section shall not further disseminate or release the  
30 information except as authorized by state or federal statute.  
31 Violation of this subsection is a misdemeanor.

32 (10) Upon receiving reports of alleged abuse or neglect, the  
33 department or law enforcement agency may interview children. The  
34 interviews may be conducted on school premises, at day-care facilities,  
35 at the child's home, or at other suitable locations outside of the  
36 presence of parents. Parental notification of the interview must occur  
37 at the earliest possible point in the investigation that will not  
38 jeopardize the safety or protection of the child or the course of the  
39 investigation. Prior to commencing the interview the department or law

1 enforcement agency shall determine whether the child wishes a third  
2 party to be present for the interview and, if so, shall make reasonable  
3 efforts to accommodate the child's wishes. Unless the child objects,  
4 the department or law enforcement agency shall make reasonable efforts  
5 to include a third party in any interview so long as the presence of  
6 the third party will not jeopardize the course of the investigation.

7 (11) Upon receiving a report of alleged child abuse and neglect,  
8 the department or investigating law enforcement agency shall have  
9 access to all ((relevant)) records birth to present of the child in the  
10 possession of mandated reporters and their employees.

11 (12) The department shall maintain investigation records and  
12 conduct timely and periodic reviews of all cases constituting abuse and  
13 neglect. The department shall maintain a log of screened-out  
14 nonabusive cases.

15 (13) The department shall use a risk assessment process when  
16 investigating alleged child abuse and neglect referrals. The  
17 department shall present the risk factors at all hearings in which the  
18 placement of a dependent child is an issue. Substance abuse must be a  
19 risk factor. The department shall, within funds appropriated for this  
20 purpose, offer enhanced community-based services to persons who are  
21 determined not to require further state intervention.

22 The department shall provide annual reports to the legislature on  
23 the effectiveness of the risk assessment process.

24 (14) Upon receipt of a report of alleged abuse or neglect the law  
25 enforcement agency may arrange to interview the person making the  
26 report and any collateral sources to determine if any malice is  
27 involved in the reporting.

28 (15) The department shall make reasonable efforts to learn the  
29 name, address, and telephone number of each person making a report of  
30 abuse or neglect under this section. The department shall provide  
31 assurances of appropriate confidentiality of the identification of  
32 persons reporting under this section. If the department is unable to  
33 learn the information required under this subsection, the department  
34 shall only investigate cases in which: (a) The department believes  
35 there is a serious threat of substantial harm to the child; (b) the  
36 report indicates conduct involving a criminal offense that has, or is  
37 about to occur, in which the child is the victim; or (c) the department  
38 has, after investigation, a report of abuse or neglect that has been

1 founded with regard to a member of the household within three years of  
2 receipt of the referral.

3 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.13 RCW  
4 to read as follows:

5 For the purposes of case planning and obtaining medical care for a  
6 child placed under the care and supervision of the department under an  
7 order entered in a proceeding under chapter 13.34 RCW, a child in need  
8 of services proceeding under chapter 13.32A RCW, or a voluntary  
9 placement agreement executed by the child's parent, legal custodian, or  
10 legal guardian, the department shall have access to all medical, mental  
11 health, counseling, and educational records for the child from birth to  
12 present. No provider may be held responsible for information  
13 subsequently used or disseminated by the department as stated in RCW  
14 26.44.030 (7) or (9).

15 **Sec. 4.** RCW 71.34.200 and 1985 c 354 s 18 are each amended to read  
16 as follows:

17 The fact of admission and all information obtained through  
18 treatment under this chapter is confidential. Confidential information  
19 may be disclosed only:

20 (1) In communications between mental health professionals to meet  
21 the requirements of this chapter, in the provision of services to the  
22 minor, or in making appropriate referrals;

23 (2) ~~((In the course of guardianship or dependency proceedings))~~ To  
24 the department, the court, or the minor's guardian ad litem when the  
25 department is responsible for the care and supervision of the minor  
26 under an order entered in a proceeding under chapter 13.34 RCW, a child  
27 in need of services proceeding under chapter 13.32A RCW, or a voluntary  
28 placement agreement executed by the child's parent, legal custodian, or  
29 legal guardian. No provider may be held responsible for information  
30 subsequently used or disseminated by the department as stated in RCW  
31 26.44.030 (7) or (9);

32 (3) To persons with medical responsibility for the minor's care;

33 (4) To the minor, the minor's parent, and the minor's attorney,  
34 subject to RCW 13.50.100;

35 (5) When the minor or the minor's parent ~~((designate[s]))~~  
36 designates in writing the persons to whom information or records may be  
37 released;

1 (6) To the extent necessary to make a claim for financial aid,  
2 insurance, or medical assistance to which the minor may be entitled or  
3 for the collection of fees or costs due to providers for services  
4 rendered under this chapter;

5 (7) To the courts as necessary to the administration of this  
6 chapter;

7 (8) To law enforcement officers or public health officers as  
8 necessary to carry out the responsibilities of their office. However,  
9 only the fact and date of admission, and the date of discharge, the  
10 name and address of the treatment provider, if any, and the last known  
11 address shall be disclosed upon request;

12 (9) To law enforcement officers, public health officers, relatives,  
13 and other governmental law enforcement agencies, if a minor has escaped  
14 from custody, disappeared from an evaluation and treatment facility,  
15 violated conditions of a less restrictive treatment order, or failed to  
16 return from an authorized leave, and then only such information as may  
17 be necessary to provide for public safety or to assist in the  
18 apprehension of the minor. The officers are obligated to keep the  
19 information confidential in accordance with this chapter;

20 (10) To the secretary for assistance in data collection and program  
21 evaluation or research, provided that the secretary adopts rules for  
22 the conduct of such evaluation and research. The rules shall include,  
23 but need not be limited to, the requirement that all evaluators and  
24 researchers sign an oath of confidentiality substantially as follows:

25 "As a condition of conducting evaluation or research concerning  
26 persons who have received services from (fill in the facility, agency,  
27 or person) I, . . . . ., agree not to divulge, publish, or otherwise  
28 make known to unauthorized persons or the public any information  
29 obtained in the course of such evaluation or research regarding minors  
30 who have received services in a manner such that the minor is  
31 identifiable.

32 I recognize that unauthorized release of confidential information  
33 may subject me to civil liability under state law.

34 /s/ . . . . . "

35 (11) To appropriate law enforcement agencies and to a person, when  
36 the identity of the person is known to the public or private agency,  
37 whose health and safety has been threatened, or who is known to have  
38 been repeatedly harassed, by the patient. The person may designate a

1 representative to receive the disclosure. The disclosure shall be made  
2 by the professional person in charge of the public or private agency or  
3 his or her designee and shall include the dates of admission,  
4 discharge, authorized or unauthorized absence from the agency's  
5 facility, and only such other information that is pertinent to the  
6 threat or harassment. The decision to disclose or not shall not result  
7 in civil liability for the agency or its employees so long as the  
8 decision was reached in good faith and without gross negligence;

9 (12) To a minor's next of kin, attorney, guardian, or conservator,  
10 if any, the information that the minor is presently in the facility or  
11 that the minor is seriously physically ill and a statement evaluating  
12 the mental and physical condition of the minor as well as a statement  
13 of the probable duration of the minor's confinement;

14 (13) Upon the death of a minor, to the minor's next of kin;

15 (14) To a facility in which the minor resides or will reside.

16 This section shall not be construed to prohibit the compilation and  
17 publication of statistical data for use by government or researchers  
18 under standards, including standards to assure maintenance of  
19 confidentiality, set forth by the secretary. The fact of admission and  
20 all information obtained pursuant to this chapter are not admissible as  
21 evidence in any legal proceeding outside this chapter, except  
22 guardianship or dependency, without the written consent of the minor or  
23 the minor's parent.

24 **Sec. 5.** RCW 70.02.050 and 1998 c 158 s 1 are each amended to read  
25 as follows:

26 (1) A health care provider may disclose health care information  
27 about a patient without the patient's authorization to the extent a  
28 recipient needs to know the information, if the disclosure is:

29 (a) To a person who the provider reasonably believes is providing  
30 health care to the patient;

31 (b) To any other person who requires health care information for  
32 health care education, or to provide planning, quality assurance, peer  
33 review, or administrative, legal, financial, or actuarial services to  
34 the health care provider; or for assisting the health care provider in  
35 the delivery of health care and the health care provider reasonably  
36 believes that the person:

37 (i) Will not use or disclose the health care information for any  
38 other purpose; and



1 (ii) Will take appropriate steps to protect the health care  
2 information;

3 (c) To any other health care provider reasonably believed to have  
4 previously provided health care to the patient, to the extent necessary  
5 to provide health care to the patient, unless the patient has  
6 instructed the health care provider in writing not to make the  
7 disclosure;

8 (d) To any person if the health care provider reasonably believes  
9 that disclosure will avoid or minimize an imminent danger to the health  
10 or safety of the patient or any other individual, however there is no  
11 obligation under this chapter on the part of the provider to so  
12 disclose;

13 (e) Oral, and made to immediate family members of the patient, or  
14 any other individual with whom the patient is known to have a close  
15 personal relationship, if made in accordance with good medical or other  
16 professional practice, unless the patient has instructed the health  
17 care provider in writing not to make the disclosure;

18 (f) To a health care provider who is the successor in interest to  
19 the health care provider maintaining the health care information;

20 (g) For use in a research project that an institutional review  
21 board has determined:

22 (i) Is of sufficient importance to outweigh the intrusion into the  
23 privacy of the patient that would result from the disclosure;

24 (ii) Is impracticable without the use or disclosure of the health  
25 care information in individually identifiable form;

26 (iii) Contains reasonable safeguards to protect the information  
27 from redisclosure;

28 (iv) Contains reasonable safeguards to protect against identifying,  
29 directly or indirectly, any patient in any report of the research  
30 project; and

31 (v) Contains procedures to remove or destroy at the earliest  
32 opportunity, consistent with the purposes of the project, information  
33 that would enable the patient to be identified, unless an institutional  
34 review board authorizes retention of identifying information for  
35 purposes of another research project;

36 (h) To a person who obtains information for purposes of an audit,  
37 if that person agrees in writing to:

1 (i) Remove or destroy, at the earliest opportunity consistent with  
2 the purpose of the audit, information that would enable the patient to  
3 be identified; and

4 (ii) Not to disclose the information further, except to accomplish  
5 the audit or report unlawful or improper conduct involving fraud in  
6 payment for health care by a health care provider or patient, or other  
7 unlawful conduct by the health care provider;

8 (i) To an official of a penal or other custodial institution in  
9 which the patient is detained;

10 (j) To provide directory information, unless the patient has  
11 instructed the health care provider not to make the disclosure;

12 (k) In the case of a hospital or health care provider to provide,  
13 in cases reported by fire, police, sheriff, or other public authority,  
14 name, residence, sex, age, occupation, condition, diagnosis, or extent  
15 and location of injuries as determined by a physician, and whether the  
16 patient was conscious when admitted.

17 (2) A health care provider shall disclose health care information  
18 about a patient without the patient's authorization if the disclosure  
19 is:

20 (a) To federal, state, or local public health authorities, to the  
21 extent the health care provider is required by law to report health  
22 care information; when needed to determine compliance with state or  
23 federal licensure, certification or registration rules or laws; or when  
24 needed to protect the public health;

25 (b) To federal, state, or local law enforcement authorities to the  
26 extent the health care provider is required by law;

27 (c) To county coroners and medical examiners for the investigations  
28 of deaths;

29 (d) Pursuant to compulsory process in accordance with RCW  
30 70.02.060.

31 (3) A health care provider shall disclose health care information  
32 about a minor patient without the minor patient's authorization to the  
33 department of social and health services, the court, or the minor's  
34 court-appointed guardian ad litem when the department is responsible  
35 for the care and supervision of the minor under an order entered in a  
36 proceeding under chapter 13.34 RCW, a child in need of services  
37 proceeding under chapter 13.32A RCW, or a voluntary placement agreement  
38 executed by the child's parent, legal custodian, or legal guardian. No

1 provider may be held responsible for information subsequently used or  
2 disseminated by the department as stated in RCW 26.44.030 (7) or (9).  
3 (4) All state or local agencies obtaining patient health care  
4 information pursuant to this section shall adopt rules establishing  
5 their record acquisition, retention, and security policies that are  
6 consistent with this chapter.

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