
HOUSE BILL 2475

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By Representatives Zeiger, Cody, Schmick, Jinkins, Tharinger, Muri, Rodne, and Kilduff

Read first time 01/13/16. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to allowing the disclosure of health care
2 information with persons with a close relationship with a patient;
3 amending RCW 70.02.050; and reenacting and amending RCW 70.02.230.

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

5 **Sec. 1.** RCW 70.02.050 and 2014 c 220 s 6 are each amended to
6 read as follows:

7 (1) A health care provider or health care facility may disclose
8 health care information, except for information and records related
9 to sexually transmitted diseases which are addressed in RCW
10 70.02.220, about a patient without the patient's authorization to the
11 extent a recipient needs to know the information, if the disclosure
12 is:

13 (a) To a person who the provider or facility reasonably believes
14 is providing health care to the patient;

15 (b) To any other person who requires health care information for
16 health care education, or to provide planning, quality assurance,
17 peer review, or administrative, legal, financial, actuarial services
18 to, or other health care operations for or on behalf of the health
19 care provider or health care facility; or for assisting the health
20 care provider or health care facility in the delivery of health care

1 and the health care provider or health care facility reasonably
2 believes that the person:

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

5 (ii) Will take appropriate steps to protect the health care
6 information;

7 (c) To any person, including a family member, if the health care
8 provider or health care facility reasonably believes that disclosure
9 will avoid or minimize an imminent danger to the health or safety of
10 the patient or any other individual, however there is no obligation
11 under this chapter on the part of the provider or facility to so
12 disclose. The fact of admission to a provider for mental health
13 services and all information and records compiled, obtained, or
14 maintained in the course of providing mental health services to
15 either voluntary or involuntary recipients of services at public or
16 private agencies is not subject to disclosure unless disclosure is
17 permitted in RCW 70.02.230; or

18 (d) For payment, including information necessary for a recipient
19 to make a claim, or for a claim to be made on behalf of a recipient
20 for aid, insurance, or medical assistance to which he or she may be
21 entitled.

22 (2) A health care provider shall disclose health care
23 information, except for information and records related to sexually
24 transmitted diseases, unless otherwise authorized in RCW 70.02.220,
25 about a patient without the patient's authorization if the disclosure
26 is:

27 (a) To federal, state, or local public health authorities, to the
28 extent the health care provider is required by law to report health
29 care information; when needed to determine compliance with state or
30 federal licensure, certification or registration rules or laws, or to
31 investigate unprofessional conduct or ability to practice with
32 reasonable skill and safety under chapter 18.130 RCW. Any health care
33 information obtained under this subsection is exempt from public
34 inspection and copying pursuant to chapter 42.56 RCW; or

35 (b) When needed to protect the public health.

36 **Sec. 2.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are
37 each reenacted and amended to read as follows:

38 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
39 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and

1 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,
2 the fact of admission to a provider for mental health services and
3 all information and records compiled, obtained, or maintained in the
4 course of providing mental health services to either voluntary or
5 involuntary recipients of services at public or private agencies must
6 be confidential.

7 (2) Information and records related to mental health services,
8 other than those obtained through treatment under chapter 71.34 RCW,
9 may be disclosed only:

10 (a) In communications between qualified professional persons to
11 meet the requirements of chapter 71.05 RCW, in the provision of
12 services or appropriate referrals, or in the course of guardianship
13 proceedings if provided to a professional person:

14 (i) Employed by the facility;

15 (ii) Who has medical responsibility for the patient's care;

16 (iii) Who is a designated mental health professional;

17 (iv) Who is providing services under chapter 71.24 RCW;

18 (v) Who is employed by a state or local correctional facility
19 where the person is confined or supervised; or

20 (vi) Who is providing evaluation, treatment, or follow-up
21 services under chapter 10.77 RCW;

22 (b) When the communications regard the special needs of a patient
23 and the necessary circumstances giving rise to such needs and the
24 disclosure is made by a facility providing services to the operator
25 of a facility in which the patient resides or will reside;

26 (c)(i) When the person receiving services, or his or her
27 guardian, designates persons to whom information or records may be
28 released, or if the person is a minor, when his or her parents make
29 such a designation;

30 (ii) A public or private agency shall release to a person's next
31 of kin, attorney, personal representative, guardian, or conservator,
32 if any:

33 (A) The information that the person is presently a patient in the
34 facility or that the person is seriously physically ill;

35 (B) A statement evaluating the mental and physical condition of
36 the patient, and a statement of the probable duration of the
37 patient's confinement, if such information is requested by the next
38 of kin, attorney, personal representative, guardian, or conservator;
39 and

1 (iii) Other information requested by the next of kin or attorney
2 as may be necessary to decide whether or not proceedings should be
3 instituted to appoint a guardian or conservator;

4 (d)(i) To the courts as necessary to the administration of
5 chapter 71.05 RCW or to a court ordering an evaluation or treatment
6 under chapter 10.77 RCW solely for the purpose of preventing the
7 entry of any evaluation or treatment order that is inconsistent with
8 any order entered under chapter 71.05 RCW.

9 (ii) To a court or its designee in which a motion under chapter
10 10.77 RCW has been made for involuntary medication of a defendant for
11 the purpose of competency restoration.

12 (iii) Disclosure under this subsection is mandatory for the
13 purpose of the federal health insurance portability and
14 accountability act;

15 (e)(i) When a mental health professional is requested by a
16 representative of a law enforcement or corrections agency, including
17 a police officer, sheriff, community corrections officer, a municipal
18 attorney, or prosecuting attorney to undertake an investigation or
19 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
20 mental health professional shall, if requested to do so, advise the
21 representative in writing of the results of the investigation
22 including a statement of reasons for the decision to detain or
23 release the person investigated. The written report must be submitted
24 within seventy-two hours of the completion of the investigation or
25 the request from the law enforcement or corrections representative,
26 whichever occurs later.

27 (ii) Disclosure under this subsection is mandatory for the
28 purposes of the federal health insurance portability and
29 accountability act;

30 (f) To the attorney of the detained person;

31 (g) To the prosecuting attorney as necessary to carry out the
32 responsibilities of the office under RCW 71.05.330(2),
33 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
34 access to records regarding the committed person's treatment and
35 prognosis, medication, behavior problems, and other records relevant
36 to the issue of whether treatment less restrictive than inpatient
37 treatment is in the best interest of the committed person or others.
38 Information must be disclosed only after giving notice to the
39 committed person and the person's counsel;

1 (h)(i) To appropriate law enforcement agencies and to a person,
2 when the identity of the person is known to the public or private
3 agency, whose health and safety has been threatened, or who is known
4 to have been repeatedly harassed, by the patient. The person may
5 designate a representative to receive the disclosure. The disclosure
6 must be made by the professional person in charge of the public or
7 private agency or his or her designee and must include the dates of
8 commitment, admission, discharge, or release, authorized or
9 unauthorized absence from the agency's facility, and only any other
10 information that is pertinent to the threat or harassment. The agency
11 or its employees are not civilly liable for the decision to disclose
12 or not, so long as the decision was reached in good faith and without
13 gross negligence.

14 (ii) Disclosure under this subsection is mandatory for the
15 purposes of the federal health insurance portability and
16 accountability act;

17 (i)(i) To appropriate corrections and law enforcement agencies
18 all necessary and relevant information in the event of a crisis or
19 emergent situation that poses a significant and imminent risk to the
20 public. The mental health service agency or its employees are not
21 civilly liable for the decision to disclose or not so long as the
22 decision was reached in good faith and without gross negligence.

23 (ii) Disclosure under this subsection is mandatory for the
24 purposes of the health insurance portability and accountability act;

25 (j) To the persons designated in RCW 71.05.425 for the purposes
26 described in those sections;

27 (k) Upon the death of a person. The person's next of kin,
28 personal representative, guardian, or conservator, if any, must be
29 notified. Next of kin who are of legal age and competent must be
30 notified under this section in the following order: Spouse, parents,
31 children, brothers and sisters, and other relatives according to the
32 degree of relation. Access to all records and information compiled,
33 obtained, or maintained in the course of providing services to a
34 deceased patient are governed by RCW 70.02.140;

35 (l) To mark headstones or otherwise memorialize patients interred
36 at state hospital cemeteries. The department of social and health
37 services shall make available the name, date of birth, and date of
38 death of patients buried in state hospital cemeteries fifty years
39 after the death of a patient;

1 (m) To law enforcement officers and to prosecuting attorneys as
2 are necessary to enforce RCW 9.41.040(2)(a)(~~(ii)~~) (iii). The extent
3 of information that may be released is limited as follows:

4 (i) Only the fact, place, and date of involuntary commitment, an
5 official copy of any order or orders of commitment, and an official
6 copy of any written or oral notice of ineligibility to possess a
7 firearm that was provided to the person pursuant to RCW 9.41.047(1),
8 must be disclosed upon request;

9 (ii) The law enforcement and prosecuting attorneys may only
10 release the information obtained to the person's attorney as required
11 by court rule and to a jury or judge, if a jury is waived, that
12 presides over any trial at which the person is charged with violating
13 RCW 9.41.040(2)(a)(~~(ii)~~) (iii);

14 (iii) Disclosure under this subsection is mandatory for the
15 purposes of the federal health insurance portability and
16 accountability act;

17 (n) When a patient would otherwise be subject to the provisions
18 of this section and disclosure is necessary for the protection of the
19 patient or others due to his or her unauthorized disappearance from
20 the facility, and his or her whereabouts is unknown, notice of the
21 disappearance, along with relevant information, may be made to
22 relatives, the department of corrections when the person is under the
23 supervision of the department, and governmental law enforcement
24 agencies designated by the physician or psychiatric advanced
25 registered nurse practitioner in charge of the patient or the
26 professional person in charge of the facility, or his or her
27 professional designee;

28 (o) Pursuant to lawful order of a court;

29 (p) To qualified staff members of the department, to the director
30 of behavioral health organizations, to resource management services
31 responsible for serving a patient, or to service providers designated
32 by resource management services as necessary to determine the
33 progress and adequacy of treatment and to determine whether the
34 person should be transferred to a less restrictive or more
35 appropriate treatment modality or facility;

36 (q) Within the mental health service agency where the patient is
37 receiving treatment, confidential information may be disclosed to
38 persons employed, serving in bona fide training programs, or
39 participating in supervised volunteer programs, at the facility when
40 it is necessary to perform their duties;

1 (r) Within the department as necessary to coordinate treatment
2 for mental illness, developmental disabilities, alcoholism, or drug
3 abuse of persons who are under the supervision of the department;

4 (s) To a licensed physician or psychiatric advanced registered
5 nurse practitioner who has determined that the life or health of the
6 person is in danger and that treatment without the information and
7 records related to mental health services could be injurious to the
8 patient's health. Disclosure must be limited to the portions of the
9 records necessary to meet the medical emergency;

10 (t) Consistent with the requirements of the federal health
11 information portability and accountability act, to a licensed mental
12 health professional or a health care professional licensed under
13 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is
14 providing care to a person, or to whom a person has been referred for
15 evaluation or treatment, to assure coordinated care and treatment of
16 that person. Psychotherapy notes may not be released without
17 authorization of the person who is the subject of the request for
18 release of information;

19 (u) To administrative and office support staff designated to
20 obtain medical records for those licensed professionals listed in (t)
21 of this subsection;

22 (v) To a facility that is to receive a person who is
23 involuntarily committed under chapter 71.05 RCW, or upon transfer of
24 the person from one evaluation and treatment facility to another. The
25 release of records under this subsection is limited to the
26 information and records related to mental health services required by
27 law, a record or summary of all somatic treatments, and a discharge
28 summary. The discharge summary may include a statement of the
29 patient's problem, the treatment goals, the type of treatment which
30 has been provided, and recommendation for future treatment, but may
31 not include the patient's complete treatment record;

32 (w) To the person's counsel or guardian ad litem, without
33 modification, at any time in order to prepare for involuntary
34 commitment or recommitment proceedings, reexaminations, appeals, or
35 other actions relating to detention, admission, commitment, or
36 patient's rights under chapter 71.05 RCW;

37 (x) To staff members of the protection and advocacy agency or to
38 staff members of a private, nonprofit corporation for the purpose of
39 protecting and advocating the rights of persons with mental disorders
40 or developmental disabilities. Resource management services may limit

1 the release of information to the name, birthdate, and county of
2 residence of the patient, information regarding whether the patient
3 was voluntarily admitted, or involuntarily committed, the date and
4 place of admission, placement, or commitment, the name and address of
5 a guardian of the patient, and the date and place of the guardian's
6 appointment. Any staff member who wishes to obtain additional
7 information must notify the patient's resource management services in
8 writing of the request and of the resource management services' right
9 to object. The staff member shall send the notice by mail to the
10 guardian's address. If the guardian does not object in writing within
11 fifteen days after the notice is mailed, the staff member may obtain
12 the additional information. If the guardian objects in writing within
13 fifteen days after the notice is mailed, the staff member may not
14 obtain the additional information;

15 (y) To all current treating providers of the patient with
16 prescriptive authority who have written a prescription for the
17 patient within the last twelve months. For purposes of coordinating
18 health care, the department may release without written authorization
19 of the patient, information acquired for billing and collection
20 purposes as described in RCW 70.02.050(1)(d). The department shall
21 notify the patient that billing and collection information has been
22 released to named providers, and provide the substance of the
23 information released and the dates of such release. The department
24 may not release counseling, inpatient psychiatric hospitalization, or
25 drug and alcohol treatment information without a signed written
26 release from the client;

27 (z)(i) To the secretary of social and health services for either
28 program evaluation or research, or both so long as the secretary
29 adopts rules for the conduct of the evaluation or research, or both.
30 Such rules must include, but need not be limited to, the requirement
31 that all evaluators and researchers sign an oath of confidentiality
32 substantially as follows:

33 "As a condition of conducting evaluation or research concerning
34 persons who have received services from (fill in the facility,
35 agency, or person) I,, agree not to divulge, publish, or
36 otherwise make known to unauthorized persons or the public any
37 information obtained in the course of such evaluation or research
38 regarding persons who have received services such that the person who
39 received such services is identifiable.

1 I recognize that unauthorized release of confidential information
2 may subject me to civil liability under the provisions of state law.

3 /s/"

4 (ii) Nothing in this chapter may be construed to prohibit the
5 compilation and publication of statistical data for use by government
6 or researchers under standards, including standards to assure
7 maintenance of confidentiality, set forth by the secretary;

8 (aa) To a family member of the patient or any other individual
9 with whom the patient is known to have a close personal relationship
10 if the information and records related to mental health are directly
11 relevant to the recipient's involvement with the patient's health
12 care. The information related to mental health may only be disclosed
13 if the patient is present, or otherwise available, prior to a
14 disclosure and has the capacity to make health care decisions. The
15 health care provider must either obtain the patient's agreement,
16 provide the patient with the opportunity to object to the disclosure
17 and the patient does not object, or reasonably infer from the
18 circumstances, based on the exercise of professional judgment, that
19 the patient does not object to the disclosure.

20 (3) Whenever federal law or federal regulations restrict the
21 release of information contained in the information and records
22 related to mental health services of any patient who receives
23 treatment for chemical dependency, the department may restrict the
24 release of the information as necessary to comply with federal law
25 and regulations.

26 (4) Civil liability and immunity for the release of information
27 about a particular person who is committed to the department of
28 social and health services under RCW 71.05.280(3) and
29 71.05.320(~~(3)~~) (4)(c) after dismissal of a sex offense as defined
30 in RCW 9.94A.030, is governed by RCW 4.24.550.

31 (5) The fact of admission to a provider of mental health
32 services, as well as all records, files, evidence, findings, or
33 orders made, prepared, collected, or maintained pursuant to chapter
34 71.05 RCW are not admissible as evidence in any legal proceeding
35 outside that chapter without the written authorization of the person
36 who was the subject of the proceeding except as provided in RCW
37 70.02.260, in a subsequent criminal prosecution of a person committed
38 pursuant to RCW 71.05.280(3) or 71.05.320(~~(3)~~) (4)(c) on charges
39 that were dismissed pursuant to chapter 10.77 RCW due to incompetency

1 to stand trial, in a civil commitment proceeding pursuant to chapter
2 71.09 RCW, or, in the case of a minor, a guardianship or dependency
3 proceeding. The records and files maintained in any court proceeding
4 pursuant to chapter 71.05 RCW must be confidential and available
5 subsequent to such proceedings only to the person who was the subject
6 of the proceeding or his or her attorney. In addition, the court may
7 order the subsequent release or use of such records or files only
8 upon good cause shown if the court finds that appropriate safeguards
9 for strict confidentiality are and will be maintained.

10 (6)(a) Except as provided in RCW 4.24.550, any person may bring
11 an action against an individual who has willfully released
12 confidential information or records concerning him or her in
13 violation of the provisions of this section, for the greater of the
14 following amounts:

15 (i) One thousand dollars; or

16 (ii) Three times the amount of actual damages sustained, if any.

17 (b) It is not a prerequisite to recovery under this subsection
18 that the plaintiff suffered or was threatened with special, as
19 contrasted with general, damages.

20 (c) Any person may bring an action to enjoin the release of
21 confidential information or records concerning him or her or his or
22 her ward, in violation of the provisions of this section, and may in
23 the same action seek damages as provided in this subsection.

24 (d) The court may award to the plaintiff, should he or she
25 prevail in any action authorized by this subsection, reasonable
26 attorney fees in addition to those otherwise provided by law.

27 (e) If an action is brought under this subsection, no action may
28 be brought under RCW 70.02.170.

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