

SENATE BILL REPORT

SSB 5435

As Passed Senate, March 6, 2017

Title: An act relating to specifying to whom information and records related to mental health services may be disclosed for the purposes of care coordination and treatment.

Brief Description: Specifying to whom information and records related to mental health services may be disclosed for the purposes of care coordination and treatment.

Sponsors: Senate Committee on Human Services, Mental Health & Housing (originally sponsored by Senators Rivers, Cleveland and Darneille).

Brief History:

Committee Activity: Human Services, Mental Health & Housing: 1/31/17, 2/14/17 [DPS].

Floor Activity:

Passed Senate: 3/06/17, 49-0.

Brief Summary of First Substitute Bill

- Broadens the category of persons authorized to receive protected health information (PHI) related to mental health treatment of an individual, without authorization of the individual, to include health care providers who are not professionally licensed, or any persons working in a care coordinator role who require the information for the purpose of coordinated care.
- Requires the person authorized to use or disclose PHI to take appropriate steps to protect the information.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: That Substitute Senate Bill No. 5435 be substituted therefor, and the substitute bill do pass.

Signed by Senators O'Ban, Chair; Miloscia, Vice Chair; Darneille, Ranking Minority Member; Carlyle, Hunt, Padden and Walsh.

Staff: Kevin Black (786-7747)

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Background: PHI of an individual is protected from disclosure by a health provider by federal and state law. PHI includes any individually identifiable information created or received by a health care provider or other enumerated entity that relates to the past, present, or future health or health care of the individual. For general medical information, the federal Health Insurance Portability and Accountability Act (HIPAA) establishes a floor for privacy of health information. State law may provide for increased or additional restrictions on disclosure of PHI. Washington State laws providing increased or additional restrictions on the release of PHI are set forth in chapter 70.02 RCW.

Washington law provides that the fact of an admission to a provider for mental health services and all information and records compiled in the course of providing mental health services is confidential and may not be disclosed without a valid authorization unless an exception applies. One such exception allows disclosure of PHI to a licensed mental health professional or health care professional who is a physician, physician assistant, osteopathic practitioner, osteopathic physician assistant, registered nurse or advanced registered nurse practitioner, or naturopath who is providing care to the individual or to whom the individual has been referred to assure coordinated care and treatment of the individual. Psychotherapy notes may not be released without authorization from the individual.

Summary of First Substitute Bill: PHI may be disclosed to a health care provider who is providing care to an individual or to whom the patient has been referred. A requirement that this provider be a licensed mental health professional or licensed health care professional is removed.

PHI may be disclosed to any person who is working in a care coordinator role or is under an agreement pursuant to HIPAA who requires information and records relating to mental health services to assure coordinated care and treatment of the individual. A person authorized to use or disclose PHI under this legislation must take appropriate steps to protect the information.

Appropriation: None.

Fiscal Note: Not requested.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill supports our work on physical and mental health integration. It allows care coordinators to function at the highest level by having access to all the information they need. There is currently confusion in state law about the use of mental health information with some interpretations limiting release of information for care coordination. We are interested in an amendment to clarify who can serve as a care coordinator. We use care coordinators to optimize the care provided to our patients. The coordinators ensure all patients who present with behavioral health symptoms have quick access to care. Care coordinators may have a variety of credentials. Peer specialists are providing more frequent care coordination. Our care coordinators report

struggles with access to information. Lack of receipt of prompt discharge information can impact seamless delivery of care. Allowing access to information reduces stigma by promoting the understanding that mental health conditions are medical conditions. Care coordinators address health issues holistically and provide education for patients on their health needs. We get a more complete picture when our coordinators can access mental health information.

CON: We object to the vagueness of the language relating to who can receive the information. Please restrict this to treating staff. Please require the reasons for transferring information to be documented so that they can be reviewed at a later date.

OTHER: We support the intent of the legislation, but believe the current language is too broad. We would have no concerns if this was fixed by amendment.

Persons Testifying: PRO: Senator Ann Rivers, Prime Sponsor; Zosia Stanley, WA State Hospital Assn.; Laura Collins, Harborview Medical Center; Melissa Johnson, Project Access NW.

CON: Mike De Felice, WA Defender Assn., WA Assn. of Criminal Defense Attorneys.

OTHER: Seth Dawson, National Alliance on Mental Illness, NAMI Washington.

Persons Signed In To Testify But Not Testifying: No one.