

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5435

65th Legislature
2017 Regular Session

Passed by the Senate March 6, 2017
Yeas 49 Nays 0

President of the Senate

Passed by the House April 7, 2017
Yeas 95 Nays 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5435** as passed by Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5435

Passed Legislature - 2017 Regular Session

State of Washington

65th Legislature

2017 Regular Session

By Senate Human Services, Mental Health & Housing (originally sponsored by Senators Rivers, Cleveland, and Darneille)

READ FIRST TIME 02/16/17.

1 AN ACT Relating to specifying to whom information and records
2 related to mental health services may be disclosed for the purposes
3 of care coordination and treatment; amending RCW 70.02.230;
4 reenacting and amending RCW 70.02.230; providing an effective date;
5 and providing an expiration date.

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

7 **Sec. 1.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are
8 each reenacted and amended to read as follows:

9 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
10 (~~70.96A.150,~~) 74.09.295, 70.02.210, 70.02.240, 70.02.250, and
11 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,
12 the fact of admission to a provider for mental health services and
13 all information and records compiled, obtained, or maintained in the
14 course of providing mental health services to either voluntary or
15 involuntary recipients of services at public or private agencies must
16 be confidential.

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

20 (a) In communications between qualified professional persons to
21 meet the requirements of chapter 71.05 RCW, in the provision of

1 services or appropriate referrals, or in the course of guardianship
2 proceedings if provided to a professional person:

3 (i) Employed by the facility;

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

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

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

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

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

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

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

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

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

24 (B) A statement evaluating the mental and physical condition of
25 the patient, and a statement of the probable duration of the
26 patient's confinement, if such information is requested by the next
27 of kin, attorney, personal representative, guardian, or conservator;
28 and

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

32 (d)(i) To the courts as necessary to the administration of
33 chapter 71.05 RCW or to a court ordering an evaluation or treatment
34 under chapter 10.77 RCW solely for the purpose of preventing the
35 entry of any evaluation or treatment order that is inconsistent with
36 any order entered under chapter 71.05 RCW.

37 (ii) To a court or its designee in which a motion under chapter
38 10.77 RCW has been made for involuntary medication of a defendant for
39 the purpose of competency restoration.

1 (iii) Disclosure under this subsection is mandatory for the
2 purpose of the federal health insurance portability and
3 accountability act;

4 (e)(i) When a mental health professional is requested by a
5 representative of a law enforcement or corrections agency, including
6 a police officer, sheriff, community corrections officer, a municipal
7 attorney, or prosecuting attorney to undertake an investigation or
8 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
9 mental health professional shall, if requested to do so, advise the
10 representative in writing of the results of the investigation
11 including a statement of reasons for the decision to detain or
12 release the person investigated. The written report must be submitted
13 within seventy-two hours of the completion of the investigation or
14 the request from the law enforcement or corrections representative,
15 whichever occurs later.

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

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

20 (g) To the prosecuting attorney as necessary to carry out the
21 responsibilities of the office under RCW 71.05.330(2),
22 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
23 access to records regarding the committed person's treatment and
24 prognosis, medication, behavior problems, and other records relevant
25 to the issue of whether treatment less restrictive than inpatient
26 treatment is in the best interest of the committed person or others.
27 Information must be disclosed only after giving notice to the
28 committed person and the person's counsel;

29 (h)(i) To appropriate law enforcement agencies and to a person,
30 when the identity of the person is known to the public or private
31 agency, whose health and safety has been threatened, or who is known
32 to have been repeatedly harassed, by the patient. The person may
33 designate a representative to receive the disclosure. The disclosure
34 must be made by the professional person in charge of the public or
35 private agency or his or her designee and must include the dates of
36 commitment, admission, discharge, or release, authorized or
37 unauthorized absence from the agency's facility, and only any other
38 information that is pertinent to the threat or harassment. The agency
39 or its employees are not civilly liable for the decision to disclose

1 or not, so long as the decision was reached in good faith and without
2 gross negligence.

3 (ii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

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

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

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

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

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

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

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

37 (ii) The law enforcement and prosecuting attorneys may only
38 release the information obtained to the person's attorney as required
39 by court rule and to a jury or judge, if a jury is waived, that

1 presides over any trial at which the person is charged with violating
2 RCW 9.41.040(2)(a)((~~ii~~)) (iii);

3 (iii) Disclosure under this subsection is mandatory for the
4 purposes of the federal health insurance portability and
5 accountability act;

6 (n) When a patient would otherwise be subject to the provisions
7 of this section and disclosure is necessary for the protection of the
8 patient or others due to his or her unauthorized disappearance from
9 the facility, and his or her whereabouts is unknown, notice of the
10 disappearance, along with relevant information, may be made to
11 relatives, the department of corrections when the person is under the
12 supervision of the department, and governmental law enforcement
13 agencies designated by the physician or psychiatric advanced
14 registered nurse practitioner in charge of the patient or the
15 professional person in charge of the facility, or his or her
16 professional designee;

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

18 (p) To qualified staff members of the department, to the director
19 of behavioral health organizations, to resource management services
20 responsible for serving a patient, or to service providers designated
21 by resource management services as necessary to determine the
22 progress and adequacy of treatment and to determine whether the
23 person should be transferred to a less restrictive or more
24 appropriate treatment modality or facility;

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

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

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

39 (t)(i) Consistent with the requirements of the federal health
40 (~~information~~) insurance portability and accountability act, to:

1 (A) ~~A ((licensed mental health professional or a health care~~
2 ~~professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,~~
3 ~~18.79, or 18.36A RCW))~~ health care provider who is providing care to
4 a ~~((person))~~ patient, or to whom a ~~((person))~~ patient has been
5 referred for evaluation or treatment~~((τ))~~; or

6 (B) Any other person who is working in a care coordinator role
7 for a health care facility or health care provider or is under an
8 agreement pursuant to the federal health insurance portability and
9 accountability act with a health care facility or a health care
10 provider and requires the information and records to assure
11 coordinated care and treatment of that ~~((person))~~ patient.

12 (ii) A person authorized to use or disclose information and
13 records related to mental health services under this subsection
14 (2)(t) must take appropriate steps to protect the information and
15 records relating to mental health services.

16 (iii) Psychotherapy notes may not be released without
17 authorization of the ~~((person))~~ patient who is the subject of the
18 request for 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 (3) Whenever federal law or federal regulations restrict the
9 release of information contained in the information and records
10 related to mental health services of any patient who receives
11 treatment for chemical dependency, the department may restrict the
12 release of the information as necessary to comply with federal law
13 and regulations.

14 (4) Civil liability and immunity for the release of information
15 about a particular person who is committed to the department of
16 social and health services under RCW 71.05.280(3) and
17 71.05.320(~~(3)~~) (4)(c) after dismissal of a sex offense as defined
18 in RCW 9.94A.030, is governed by RCW 4.24.550.

19 (5) The fact of admission to a provider of mental health
20 services, as well as all records, files, evidence, findings, or
21 orders made, prepared, collected, or maintained pursuant to chapter
22 71.05 RCW are not admissible as evidence in any legal proceeding
23 outside that chapter without the written authorization of the person
24 who was the subject of the proceeding except as provided in RCW
25 70.02.260, in a subsequent criminal prosecution of a person committed
26 pursuant to RCW 71.05.280(3) or 71.05.320(~~(3)~~) (4)(c) on charges
27 that were dismissed pursuant to chapter 10.77 RCW due to incompetency
28 to stand trial, in a civil commitment proceeding pursuant to chapter
29 71.09 RCW, or, in the case of a minor, a guardianship or dependency
30 proceeding. The records and files maintained in any court proceeding
31 pursuant to chapter 71.05 RCW must be confidential and available
32 subsequent to such proceedings only to the person who was the subject
33 of the proceeding or his or her attorney. In addition, the court may
34 order the subsequent release or use of such records or files only
35 upon good cause shown if the court finds that appropriate safeguards
36 for strict confidentiality are and will be maintained.

37 (6)(a) Except as provided in RCW 4.24.550, any person may bring
38 an action against an individual who has willfully released
39 confidential information or records concerning him or her in

1 violation of the provisions of this section, for the greater of the
2 following amounts:

3 (i) One thousand dollars; or

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

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

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

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

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

17 **Sec. 2.** RCW 70.02.230 and 2016 sp.s. c 29 s 417 are each amended
18 to read as follows:

19 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
20 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or
21 pursuant to a valid authorization under RCW 70.02.030, the fact of
22 admission to a provider for mental health services and all
23 information and records compiled, obtained, or maintained in the
24 course of providing mental health services to either voluntary or
25 involuntary recipients of services at public or private agencies must
26 be confidential.

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

30 (a) In communications between qualified professional persons to
31 meet the requirements of chapter 71.05 RCW, in the provision of
32 services or appropriate referrals, or in the course of guardianship
33 proceedings if provided to a professional person:

34 (i) Employed by the facility;

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

36 (iii) Who is a designated crisis responder;

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

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

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

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

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

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

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

16 (B) A statement evaluating the mental and physical condition of
17 the patient, and a statement of the probable duration of the
18 patient's confinement, if such information is requested by the next
19 of kin, attorney, personal representative, guardian, or conservator;
20 and

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

24 (d)(i) To the courts as necessary to the administration of
25 chapter 71.05 RCW or to a court ordering an evaluation or treatment
26 under chapter 10.77 RCW solely for the purpose of preventing the
27 entry of any evaluation or treatment order that is inconsistent with
28 any order entered under chapter 71.05 RCW.

29 (ii) To a court or its designee in which a motion under chapter
30 10.77 RCW has been made for involuntary medication of a defendant for
31 the purpose of competency restoration.

32 (iii) Disclosure under this subsection is mandatory for the
33 purpose of the federal health insurance portability and
34 accountability act;

35 (e)(i) When a mental health professional or designated crisis
36 responder is requested by a representative of a law enforcement or
37 corrections agency, including a police officer, sheriff, community
38 corrections officer, a municipal attorney, or prosecuting attorney to
39 undertake an investigation or provide treatment under RCW 71.05.150,
40 10.31.110, or 71.05.153, the mental health professional or designated

1 crisis responder shall, if requested to do so, advise the
2 representative in writing of the results of the investigation
3 including a statement of reasons for the decision to detain or
4 release the person investigated. The written report must be submitted
5 within seventy-two hours of the completion of the investigation or
6 the request from the law enforcement or corrections representative,
7 whichever occurs later.

8 (ii) Disclosure under this subsection is mandatory for the
9 purposes of the federal health insurance portability and
10 accountability act;

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

12 (g) To the prosecuting attorney as necessary to carry out the
13 responsibilities of the office under RCW 71.05.330(2),
14 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
15 access to records regarding the committed person's treatment and
16 prognosis, medication, behavior problems, and other records relevant
17 to the issue of whether treatment less restrictive than inpatient
18 treatment is in the best interest of the committed person or others.
19 Information must be disclosed only after giving notice to the
20 committed person and the person's counsel;

21 (h)(i) To appropriate law enforcement agencies and to a person,
22 when the identity of the person is known to the public or private
23 agency, whose health and safety has been threatened, or who is known
24 to have been repeatedly harassed, by the patient. The person may
25 designate a representative to receive the disclosure. The disclosure
26 must be made by the professional person in charge of the public or
27 private agency or his or her designee and must include the dates of
28 commitment, admission, discharge, or release, authorized or
29 unauthorized absence from the agency's facility, and only any other
30 information that is pertinent to the threat or harassment. The agency
31 or its employees are not civilly liable for the decision to disclose
32 or not, so long as the decision was reached in good faith and without
33 gross negligence.

34 (ii) Disclosure under this subsection is mandatory for the
35 purposes of the federal health insurance portability and
36 accountability act;

37 (i)(i) To appropriate corrections and law enforcement agencies
38 all necessary and relevant information in the event of a crisis or
39 emergent situation that poses a significant and imminent risk to the
40 public. The mental health service agency or its employees are not

1 civilly liable for the decision to disclose or not so long as the
2 decision was reached in good faith and without gross negligence.

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

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

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

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

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

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

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

33 (iii) Disclosure under this subsection is mandatory for the
34 purposes of the federal health insurance portability and
35 accountability act;

36 (n) When a patient would otherwise be subject to the provisions
37 of this section and disclosure is necessary for the protection of the
38 patient or others due to his or her unauthorized disappearance from
39 the facility, and his or her whereabouts is unknown, notice of the
40 disappearance, along with relevant information, may be made to

1 relatives, the department of corrections when the person is under the
2 supervision of the department, and governmental law enforcement
3 agencies designated by the physician or psychiatric advanced
4 registered nurse practitioner in charge of the patient or the
5 professional person in charge of the facility, or his or her
6 professional designee;

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

8 (p) To qualified staff members of the department, to the director
9 of behavioral health organizations, to resource management services
10 responsible for serving a patient, or to service providers designated
11 by resource management services as necessary to determine the
12 progress and adequacy of treatment and to determine whether the
13 person should be transferred to a less restrictive or more
14 appropriate treatment modality or facility;

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

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

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

29 (t)(i) Consistent with the requirements of the federal health
30 (~~information~~) insurance portability and accountability act, to:

31 (A) A (~~licensed mental health professional or a health care~~
32 professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,
33 18.79, or 18.36A RCW) health care provider who is providing care to
34 a (~~person~~) patient, or to whom a (~~person~~) patient has been
35 referred for evaluation or treatment(~~(7)~~); or

36 (B) Any other person who is working in a care coordinator role
37 for a health care facility or health care provider or is under an
38 agreement pursuant to the federal health insurance portability and
39 accountability act with a health care facility or a health care

1 provider and requires the information and records to assure
2 coordinated care and treatment of that ((person)) patient.

3 (ii) A person authorized to use or disclose information and
4 records related to mental health services under this subsection
5 (2)(t) must take appropriate steps to protect the information and
6 records relating to mental health services.

7 (iii) Psychotherapy notes may not be released without
8 authorization of the ((person)) patient who is the subject of the
9 request for release of information;

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

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

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

28 (x) To staff members of the protection and advocacy agency or to
29 staff members of a private, nonprofit corporation for the purpose of
30 protecting and advocating the rights of persons with mental disorders
31 or developmental disabilities. Resource management services may limit
32 the release of information to the name, birthdate, and county of
33 residence of the patient, information regarding whether the patient
34 was voluntarily admitted, or involuntarily committed, the date and
35 place of admission, placement, or commitment, the name and address of
36 a guardian of the patient, and the date and place of the guardian's
37 appointment. Any staff member who wishes to obtain additional
38 information must notify the patient's resource management services in
39 writing of the request and of the resource management services' right
40 to object. The staff member shall send the notice by mail to the

1 guardian's address. If the guardian does not object in writing within
2 fifteen days after the notice is mailed, the staff member may obtain
3 the additional information. If the guardian objects in writing within
4 fifteen days after the notice is mailed, the staff member may not
5 obtain the additional information;

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

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

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

31 I recognize that unauthorized release of confidential information
32 may subject me to civil liability under the provisions of state law.
33 /s/"

34 (ii) Nothing in this chapter may be construed to prohibit the
35 compilation and publication of statistical data for use by government
36 or researchers under standards, including standards to assure
37 maintenance of confidentiality, set forth by the secretary.

38 (3) Whenever federal law or federal regulations restrict the
39 release of information contained in the information and records

1 related to mental health services of any patient who receives
2 treatment for chemical dependency, the department may restrict the
3 release of the information as necessary to comply with federal law
4 and regulations.

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

10 (5) The fact of admission to a provider of mental health
11 services, as well as all records, files, evidence, findings, or
12 orders made, prepared, collected, or maintained pursuant to chapter
13 71.05 RCW are not admissible as evidence in any legal proceeding
14 outside that chapter without the written authorization of the person
15 who was the subject of the proceeding except as provided in RCW
16 70.02.260, in a subsequent criminal prosecution of a person committed
17 pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were
18 dismissed pursuant to chapter 10.77 RCW due to incompetency to stand
19 trial, in a civil commitment proceeding pursuant to chapter 71.09
20 RCW, or, in the case of a minor, a guardianship or dependency
21 proceeding. The records and files maintained in any court proceeding
22 pursuant to chapter 71.05 RCW must be confidential and available
23 subsequent to such proceedings only to the person who was the subject
24 of the proceeding or his or her attorney. In addition, the court may
25 order the subsequent release or use of such records or files only
26 upon good cause shown if the court finds that appropriate safeguards
27 for strict confidentiality are and will be maintained.

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

33 (i) One thousand dollars; or

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

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

38 (c) Any person may bring an action to enjoin the release of
39 confidential information or records concerning him or her or his or

1 her ward, in violation of the provisions of this section, and may in
2 the same action seek damages as provided in this subsection.

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

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

8 NEW SECTION. **Sec. 3.** Section 1 of this act expires April 1,
9 2018.

10 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect April
11 1, 2018.

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