

HOUSE BILL REPORT

HB 2416

As Passed Legislature

Title: An act relating to disclosures of information and records related to forensic mental health services.

Brief Description: Concerning disclosures of information and records related to forensic mental health services.

Sponsors: Representatives Kilduff, Chopp, Leavitt, Macri, Cody, Stonier, Ormsby and Pollet.

Brief History:

Committee Activity:

Health Care & Wellness: 1/29/20, 2/4/20 [DP].

Floor Activity:

Passed House: 2/18/20, 97-0.

Passed Senate: 3/3/20, 49-0.

Passed Legislature.

Brief Summary of Bill

- Allows health care information in forensic mental health records and reports to be disclosed as permitted in the Uniform Health Care Information Act.

HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

Majority Report: Do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Schmick, Ranking Minority Member; Caldier, Assistant Ranking Minority Member; Chambers, Chopp, Davis, DeBolt, Harris, Maycumber, Riccelli, Robinson, Stonier, Thai and Tharinger.

Staff: Chris Blake (786-7392).

Background:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes nationwide standards for the use, disclosure, storage, and transfer of protected health information. Entities covered by HIPAA must have a patient's authorization to use or

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disclose health care information, unless there is a specified exception. Some exceptions pertain to disclosures for treatment, payment, and health care operations; public health activities; judicial proceedings; law enforcement purposes; and research purposes. The HIPAA allows a state to establish standards that are more stringent than its provisions.

In Washington, the Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. Some exceptions include disclosures for: the provision of health care; quality improvement, legal, actuarial, and administrative services; research purposes; directory information; public health and law enforcement activities as required by law; and judicial proceedings.

Under both state and federal law, a health care provider or health care facility may disclose health care information without a patient's authorization if specific conditions are met and the disclosure is:

- to a family member of the patient, a close friend of the patient, or another person identified by the patient, if the disclosure is directly related to the recipient's involvement with the patient's health care or payment related to the patient's health care; or
- for the purpose of notifying, including identifying or locating, a family member, a personal representative, or another person responsible for the care of the patient, of the patient's location, general condition, or death.

Under this exception, disclosures of information related to mental health services may include the patient's diagnosis and treatment recommendations; safety concerns related to the patient; information about available resources, such as case management and support; and the process to ensure safe transitions to different levels of care.

State law protects records regarding the medical, expert, and professional care and treatment provided to persons who have been involuntarily detained, hospitalized, or committed pursuant to competency proceedings or upon having been determined to be not guilty by reason of insanity. Disclosures of the records may only be made to the committed person, the person's attorney, the person's personal physician, the supervising community corrections officer, the prosecuting attorney, the court, the protection and advocacy agency, or other experts or professionals who demonstrate a need for the records. There is an additional disclosure exception for offenders who are acquitted of sex offenses and then involuntarily committed after having been found not guilty by reason of insanity. The UHCIA includes additional permitted disclosure of these records for activities such as providing evaluation and treatment services or considering motions for the use of involuntary medication.

Summary of Bill:

Health care information in forensic mental health records and reports may be disclosed as permitted by the Uniform Health Care Information Act. It is specified that information related to mental health services is included in the authority to disclose health care information to persons with a close relationship to the patient.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This is a follow-up bill to 2017 legislation which allowed for discretionary sharing of health care information in limited and particular circumstances to make sure that family members were involved in the care of loved ones while also protecting privacy. It is critical for family members to have access to this information. Family members play an important role in a person's mental health and recovery. Further clarification of prior legislation is needed to allow for the limited sharing of information to apply to people in forensic settings.

The bill is consistent with federal and state law and maintains the structure of both of those laws. This bill maintains that patients are the owners and decision makers of when their data can be used or disclosed except in certain narrow circumstances. The approach in the bill is narrowly tailored.

(Opposed) None.

(Other) Family involvement contributes to the therapeutic success of patients. What happens to a person going through the criminal justice system not only affects the patient, but also their families. Families are a critical source of support for loved ones in crisis. This bill will allow the Department of Social and Health Services (DSHS) to release information that was previously restricted under the forensic mental health law. This bill will allow the DSHS to share basic information with family members who want to learn what has happened to their loved ones when they are in crisis. This bill takes a balanced approach between family support and privacy. This bill allows the DSHS to respect the privacy of the patients who do not want their information shared. This bill needs a couple of technical corrections.

Persons Testifying: (In support) Representative Kilduff, prime sponsor; Zosia Stanley, Washington State Hospital Association; and Melanie Smith, National Alliance on Mental Illness Washington.

(Other) Sean Murphy, Behavioral Health Administration, Department of Social and Health Services.

Persons Signed In To Testify But Not Testifying: None.