

SENATE BILL REPORT

HB 2416

As Reported by Senate Committee On:
Behavioral Health Subcommittee to Health & Long Term Care, February 27, 2020

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: Passed House: 2/18/20, 96-0; 2/18/20, 97-0.

Committee Activity: Behavioral Health Subcommittee to Health & Long Term Care: 2/27/20, 2/27/20 [DP].

Brief Summary of Bill

- Allows health care facilities to disclose forensic mental health treatment records in the manner permitted by the Uniform Health Care Information Act.

SENATE COMMITTEE ON BEHAVIORAL HEALTH SUBCOMMITTEE TO HEALTH & LONG TERM CARE

Majority Report: Do pass.

Signed by Senators Dhingra, Chair; Wagoner, Ranking Member; Darneille, Frockt and O'Ban.

Staff: Kevin Black (786-7747)

Background: Federal Health Information Privacy Standards. 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 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

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enforcement purposes; and research purposes. The HIPAA allows a state to establish standards that are more stringent than its provisions.

The Uniform Health Care Information Act. 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
- is 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.

Forensic Mental Health Treatment Records. Forensic mental health treatment refers to court-ordered evaluation or treatment services related to criminal insanity or competency to stand trial. State law protects forensic mental health treatment records from disclosure except 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. Additional disclosure is permitted for offenders who are acquitted of sex offenses and then involuntarily committed after having been found not guilty by reason of insanity. Statutes related to forensic mental health treatment records do not reference the UHCIA or incorporate UHCIA exceptions related to inquiries by family members or close friends of the forensic patient.

Summary of Bill: Forensic treatment records relating to persons committed for evaluation or treatment related to criminal insanity or competency to stand trial may be disclosed to third parties as permitted by the Uniform Health Care Information Act.

A reference to information related to mental health services is added to a directive within the Uniform Health Care Information Act that disclosures of health care information must be limited to the minimum necessary to accomplish the purpose of the disclosure.

Appropriation: None.

Fiscal Note: Available.

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: PRO: This is about families who are not getting word about their loved ones when they fall into the forensic system. This follows up on bipartisan legislation in 2015 that modified the UHCIA to protect patient privacy but allow the discretionary sharing of minimal health care information with loved ones. This will give families important peace of mind. Families are incredibly important in the recovery of their loved ones.

Persons Testifying: PRO: Representative Christine Kilduff, Prime Sponsor; Melanie Smith, NAMI Washington.

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