

# HOUSE BILL REPORT

## ESHB 1679

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### As Amended by the Senate

**Title:** An act relating to disclosure of health care information.

**Brief Description:** Regarding the disclosure of health care information.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Cody, Jinkins and Ryu).

### Brief History:

#### Committee Activity:

Health Care & Wellness: 2/14/13, 2/22/13 [DPS].

#### Floor Activity:

Passed House: 3/11/13, 87-10.

Senate Amended.

Passed Senate: 4/17/13, 47-1.

### Brief Summary of Engrossed Substitute Bill

- Maintains heightened standards of privacy for patient information and records related to mental health services and information related to sexually transmitted disease while consolidating those provisions in the Uniform Health Care Information Act.
- Changes and adds situations in which the disclosure of mental health information is permitted without an authorization, such as to provide health care to the patient.
- Changes and adds situations in which the disclosure of mental health services and sexually transmitted disease information is permitted without an authorization, such as to coroners and medical examiners and for research.
- Prohibits health care providers and their employees and contractors from using or disclosing health care information for marketing or fundraising purposes or selling health care information to a third party, unless the information is in a de-identified and aggregated form.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

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*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.*

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 16 members: Representatives Cody, Chair; Jenkins, Vice Chair; Schmick, Ranking Minority Member; Hope, Assistant Ranking Minority Member; Angel, Clibborn, Green, Manweller, Moeller, Morrell, Riccelli, Rodne, Ross, Short, Tharinger and Van De Wege.

**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 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.

Washington has heightened protections for information related to mental health, human immunodeficiency virus (HIV), and sexually transmitted disease (STD). For mental health information, the fact of admission and all information and records compiled in the course of providing services to patients at public or private mental health agencies is confidential. With respect to HIV and STD information, it is prohibited to disclose the identity of a person who has considered or requested a test for an STD; the identity of the subject of an HIV antibody test or test for any other STD; the results of those tests; and information regarding the diagnosis of or treatment for HIV infection and for any other confirmed STD. Both the protections related to mental health, HIV, and STD information have several exceptions to allow the disclosure of the information without the patient's authorization or consent.

**Summary of Engrossed Substitute Bill:**

The term "information and records related to mental health services" (mental health information) is codified under the UHCIA with predominantly the same meaning as related terms in the mental health statutes. The term "information and records related to sexually transmitted diseases" (STD information) is defined, similar to the standard in the STD statute, as health care information related to the identity of a person who has had an HIV or other STD test performed upon them, any results of such tests, and any information regarding the diagnosis or treatment of an STD. Both definitions expressly state that they are a type of "health care information."

Statutory provisions related to the disclosure of mental health information, including children's mental health information, and STD information are consolidated into the UHCIA. The heightened standards of privacy for those types of information are maintained.

The requirement that an attorney seeking health care information from a health care provider or patient be given 14 days' notice so that either may object to the request, is limited to only apply to hospitals. For all other health care facilities and providers, upon receipt of a discovery request or compulsory process, the health care facility or provider must send a copy of the request to the last known address of the patient and then the health care provider may produce the health care information if the patient does not raise an objection.

Health care providers and their employees and contractors are prohibited from using or disclosing health care information for marketing or fundraising purposes, unless it is permitted by federal law, or selling health care information to a third party, unless the information is in a de-identified and aggregated form.

Entities that receive health care information for health care education or to provide services to a health care provider, such as planning, quality assurance, legal, or financial activities, are subject to the same disclosure requirements as the health care provider for which the entity is working. If a health care provider learns that an entity has violated this responsibility, the health care provider must terminate the contract with the entity unless reasonable steps to correct the situation were taken or the violating activity has been discontinued.

#### *General Mental Health Information.*

Patient mental health information disclosure standards are maintained as they have been in the mental health chapters, except in some cases in which there is either a change in the standard for disclosure without authorization or a new type of disclosure without authorization is established. These include:

- Mental health information may be disclosed to a person who is providing health care to the patient, as provided under the UHCIA.
- The permitted disclosure of mental health records for management or financial audits is changed to the UHCIA standard that allows disclosure to a person for health care education; planning; quality assurance; peer review; administrative, legal, financial, or actuarial purposes; or for assisting a health care provider or facility in the delivery of health care.
- The permitted disclosure of: (1) adult mental health information for evaluation or research subject to the Department of Social and Health Services (DSHS) adopting related rules and the researcher signing an oath of confidentiality; and (2) mental health records for purposes of research, are changed to the UHCIA standard allowing disclosures for use in a research project approved by an institutional review board.
- Mental health information may be disclosed to an official of a penal or other custodial institution in which the patient is detained.
- The permitted disclosure of: (1) mental health information for a recipient of the information to make a claim for aid, insurance, or Medicaid; and (2) mental health treatment records to the DSHS, regional support network directors, or qualified staff when needed for billing and collection purposes, are changed to allow disclosures for payment, including making a claim for aid, insurance, or medical assistance.

- The permitted disclosure of mental health information to the Department of Health for determining compliance with licensing standards is expanded to the UHCIA standard that requires that the information be provided to federal, state, or local public health authorities as required by law to determine compliance with credentialing laws or to protect public health.
- Mental health information must be disclosed to county coroners and medical examiners for death investigations.
- Mental health information may be disclosed to an organ procurement organization for the purpose of determining the medical suitability of a body part.

In cases in which there is not a specific exception to the privacy standard, the subject of the mental health information may allow disclosure pursuant to the written authorization requirements of the UHCIA, as opposed to the undefined "release" and "written informed consent" requirements of the mental health chapters.

Prohibitions against the willful release of confidential information and records related to mental health services are eliminated.

*General STD Information.*

Patient STD information disclosure standards are maintained as they have been in the STD chapter, except that information and records related to STDs may be disclosed for use in a research project approved by an institutional review board. Information and records related to STDs must be disclosed to a coroner or medical examiner or an organ procurement organization regardless of the patient's authorization. In addition, it is clarified that the information and records related to STDs must be disclosed to federal, state, and local public health authorities as required by law, to determine compliance with regulatory laws, or to protect the public health.

In cases in which there is not a specific exception to the privacy standard, the subject of the STD information may allow disclosure pursuant to the written authorization requirements of the UHCIA, as opposed to the undefined "release" requirement of the STD chapters.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendments provide patients with the right to receive an accounting of all disclosures of mental health treatment records, except for specified disclosures provided to law enforcement regarding the release of certain offenders.

In a situation involving the disclosure of health care information to avoid or minimize an imminent danger to the patient or another, the fact of admission for mental health services and information and records from providing mental health services at public or private agencies may not be disclosed, except as permitted under mental health disclosure provisions.

Health care providers, health care facilities, and their employees and contractors are prohibited from selling health care information to a third party except for: treatment or payment; sale, transfer, merger, or consolidation of a business; remuneration to a third party for services; disclosures required by law; providing access to or an accounting of disclosures

to an individual; public health purposes; research; with an individual's authorization; or where a reasonable cost-based fee is paid to prepare and transmit the information in compliance with an authorized disclosure.

Health care information may be disclosed without the patient's authorization to a person subject to the jurisdiction of the federal Food and Drug Administration as it relates to quality, safety, or effectiveness activities for a regulated product.

The term "deidentified" is defined to mean health information that does not identify an individual and has no reasonable basis to believe that the information can be used to identify an individual.

Current law is restored as it relates to providing health care information pursuant to a discovery request or compulsory process.

Current law is restored as it relates to authorizing a legal action against an individual who has willfully released confidential information and records related to mental health services.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The act takes effect July 1, 2014, except for section 5 relating to the disclosure of health care information for research purposes, to coroners and medical examiners, and to organ procurement organizations, which contains an emergency clause and takes effect immediately

**Staff Summary of Public Testimony:**

(In support) This bill tries to put all of the confidentiality laws into one single chapter in the code to make it simpler and easier to understand. Confidentiality laws can be very confusing. This bill makes the compulsory process uniform across the country for court-ordered receipt of treatment records. This bill is an honest attempt to provide improved access to needed mental health care services and programs while providing client privacy of individual health care information. This version protects an individual who is accessing HIV testing, not just the results of the test, which is a huge improvement. The research exemption for HIV/AIDS is a good step toward treating this public health threat. This bill allows disclosures to coroners and medical examiners while preventing them from redisclosing the information.

(In support with concerns) When a provider receives a subpoena for health care information, the provider must respond immediately and provide a copy of the subpoena to the patient. The burden of informing the patient should remain with the party issuing the subpoena to stay in order to keep state law consistent with federal privacy laws and avoid undue burdens on providers.

(Opposed) Confidentiality laws are very confusing and this bill does not add much clarity. It is not certain that some of the current disclosures of information will still be allowed under

this bill. Some sections have conflicting statements. There seems to be a broadening of the definition of mental health services. It is difficult to put all of these provisions together without streamlining the laws.

**Persons Testifying:** (In support) Representative Cody, prime sponsor; Lucy Homans, Washington State Psychological Association; Jim Bloss, National Alliance on Mental Health; and Carey Morris, Lifelong AIDS Alliance.

(In support with concerns) Amber Ulvenes, Group Health Cooperative.

(Opposed) Lisa Westlund, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.