

SENATE BILL REPORT

SHB 1477

As Reported by Senate Committee On:
Human Services, Mental Health & Housing, March 27, 2017

Title: An act relating to disclosure of health-related information with persons with a close relationship with a patient.

Brief Description: Concerning disclosure of health-related information with persons with a close relationship with a patient.

Sponsors: House Committee on Health Care & Wellness (originally sponsored by Representatives Kilduff, Muri, Lytton, Stambaugh, Orwall, McDonald, Robinson, Lovick, Goodman, Sells, Appleton and Fey).

Brief History: Passed House: 3/03/17, 69-28.

Committee Activity: Human Services, Mental Health & Housing: 3/21/17, 3/27/17 [DPA].

Brief Summary of Amended Bill

- Provides circumstances in which a health care provider or health care facility may share health information with a family member or close friend of the patient without the patient's consent.
- Specifies information related to mental health services which may be shared with a family member or close friend when a person does not object to the disclosure or does not have the opportunity to object.
- Allows disclosure of health information to prevent or lessen a serious and imminent threat to any person or the public.

SENATE COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH & HOUSING

Majority Report: Do pass as amended.

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: Health information of an individual is protected from disclosure by a health provider by federal and state law. Health information 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 health information. Washington State laws providing increased or additional restrictions on the release of health information are set forth in chapter 70.02 RCW.

Both state and federal law allow for the disclosure of health care information without an authorization in cases in which the disclosure is to an immediate family member or a person with a close relationship with the patient. Under state law, the disclosure does not apply to information related to mental health or sexually transmitted diseases. State law allows the disclosure as long as the patient has not instructed the health care provider in writing not to make the disclosure. Federal law allows for a similar disclosure, however, it does not exclude information related to mental health and sexually transmitted diseases. Under federal law, the recipient of the information must be involved in the patient's health care or payment related to the health care. The determination will vary based upon whether the patient is present and has the capacity to make health care decisions.

The federal Department of Health and Human Services (HHS) periodically releases guidance to illuminate the interpretation of HIPAA. In 2014, HHS released guidance on how HIPAA both restricts and allows sharing of information related to mental health.

This legislation is substantially similar to Oregon House Bill 2948 (2015), which was enacted by the Oregon Legislature with an effective date of June 24, 2015.

Summary of Amended Bill: A health care provider or health care facility may use or disclose health care information without a patient's consent if the use or 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 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.

If the patient is not present or if obtaining an authorization is impracticable due to incapacity or an emergency situation, the disclosure is permissible without an authorization if the health care provider or health care facility determines that, in its professional judgment, the disclosure is in the best interests of the patient. In such circumstances, the health care provider or health care facility may only disclose information directly relevant to the person's involvement with the patient's health care.

If the patient is present, the disclosure is permissible if the health care provider or health care facility: (1) obtains the patient's agreement; (2) provides the patient an opportunity to object

and the patient does not expressly object; or (3) reasonably infers from the circumstances that the patient does not object.

If a person is being treated for a mental disorder, the disclosure 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.

Immunity from civil liability is provided for health care providers and health care facilities when making or not making a disclosure.

The authority of a health care provider or health care facility to disclose certain health care information that is believed will avoid or minimize an imminent danger to the patient or another person is changed to allow the information to be disclosed if it is believed in good faith that it will prevent or lessen a serious and imminent threat to any person or the public. The information may only be disclosed to persons who are reasonably able to prevent or lessen the threat, including the target of the threat. A prohibition on sharing the fact of admission for mental health services and information and records related to receiving mental health services is removed.

EFFECT OF HUMAN SERVICES, MENTAL HEALTH & HOUSING COMMITTEE AMENDMENT(S):

- Removes provision specifying that allowable disclosures of health information include allowing a health provider to use professional judgement to allow a person with a close relationship with a patient to pick up filled prescriptions, medical supplies, x-rays, or other similar forms of health care information.
- Removes provision requiring a health provider to document the fact, date, and content of disclosures of health information made pursuant to this act.

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 Substitute House Bill: *The committee recommended a different version of the bill than what was heard.* PRO: This bill is about getting families and loved ones off the sidelines and into the care of those who need help to achieve recovery, particularly from mental health conditions. One in four individuals suffer from a mental health condition. This is modelled on a successful Oregon law, and is aimed at striking a balance between privacy protection and practical care needs. The disclosures permitted are minimal and targeted and their use is discretionary. It does not create a mandate on providers or facilities. There is liability protection, but immunity is limited to the facility and the provider. We have agreed on amended language offered by the Hospital Association.

OTHER: This bill has some updating to do to align language with HIPAA and existing law.

Persons Testifying: PRO: Representative Kilduff, Prime Sponsor; Seth Dawson, National Alliance on Mental Illness, NAMI Washington.

OTHER: Zosia Stanley, Washington State Hospital Association.

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