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**SUBSTITUTE HOUSE BILL 1413**

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**State of Washington                      65th Legislature                      2017 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Cody, Schmick, Macri, Harris, Jinkins, Appleton, and Springer)

READ FIRST TIME 02/17/17.

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 health care  
10 provider and requires the information and records related to mental  
11 health services to assure coordinated care and treatment of that  
12 ~~((person))~~ patient.

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

17       (iii) Psychotherapy notes may not be released without  
18 authorization of the ~~((person))~~ patient who is the subject of the  
19 request for release of information;

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

23       (v) To a facility that is to receive a person who is  
24 involuntarily committed under chapter 71.05 RCW, or upon transfer of  
25 the person from one evaluation and treatment facility to another. The  
26 release of records under this subsection is limited to the  
27 information and records related to mental health services required by  
28 law, a record or summary of all somatic treatments, and a discharge  
29 summary. The discharge summary may include a statement of the  
30 patient's problem, the treatment goals, the type of treatment which  
31 has been provided, and recommendation for future treatment, but may  
32 not include the patient's complete treatment record;

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

38       (x) To staff members of the protection and advocacy agency or to  
39 staff members of a private, nonprofit corporation for the purpose of  
40 protecting and advocating the rights of persons with mental disorders

1 or developmental disabilities. Resource management services may limit  
2 the release of information to the name, birthdate, and county of  
3 residence of the patient, information regarding whether the patient  
4 was voluntarily admitted, or involuntarily committed, the date and  
5 place of admission, placement, or commitment, the name and address of  
6 a guardian of the patient, and the date and place of the guardian's  
7 appointment. Any staff member who wishes to obtain additional  
8 information must notify the patient's resource management services in  
9 writing of the request and of the resource management services' right  
10 to object. The staff member shall send the notice by mail to the  
11 guardian's address. If the guardian does not object in writing within  
12 fifteen days after the notice is mailed, the staff member may obtain  
13 the additional information. If the guardian objects in writing within  
14 fifteen days after the notice is mailed, the staff member may not  
15 obtain the additional information;

16 (y) To all current treating providers of the patient with  
17 prescriptive authority who have written a prescription for the  
18 patient within the last twelve months. For purposes of coordinating  
19 health care, the department may release without written authorization  
20 of the patient, information acquired for billing and collection  
21 purposes as described in RCW 70.02.050(1)(d). The department shall  
22 notify the patient that billing and collection information has been  
23 released to named providers, and provide the substance of the  
24 information released and the dates of such release. The department  
25 may not release counseling, inpatient psychiatric hospitalization, or  
26 drug and alcohol treatment information without a signed written  
27 release from the client;

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

34 "As a condition of conducting evaluation or research concerning  
35 persons who have received services from (fill in the facility,  
36 agency, or person) I, . . . ., agree not to divulge, publish, or  
37 otherwise make known to unauthorized persons or the public any  
38 information obtained in the course of such evaluation or research

1 regarding persons who have received services such that the person who  
2 received such services is identifiable.

3 I recognize that unauthorized release of confidential information  
4 may subject me to civil liability under the provisions of state law.  
5 /s/ . . . . ."

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

10 (3) Whenever federal law or federal regulations restrict the  
11 release of information contained in the information and records  
12 related to mental health services of any patient who receives  
13 treatment for chemical dependency, the department may restrict the  
14 release of the information as necessary to comply with federal law  
15 and regulations.

16 (4) Civil liability and immunity for the release of information  
17 about a particular person who is committed to the department of  
18 social and health services under RCW 71.05.280(3) and  
19 71.05.320(~~(3)~~) (4)(c) after dismissal of a sex offense as defined  
20 in RCW 9.94A.030, is governed by RCW 4.24.550.

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



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

6 (i) One thousand dollars; or

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

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

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

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

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

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

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

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

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

37 (i) Employed by the facility;

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

39 (iii) Who is a designated crisis responder;

1 (iv) Who is providing services under chapter 71.24 RCW;  
2 (v) Who is employed by a state or local correctional facility  
3 where the person is confined or supervised; or  
4 (vi) Who is providing evaluation, treatment, or follow-up  
5 services under chapter 10.77 RCW;

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

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

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

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

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

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

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

32 (ii) To a court or its designee in which a motion under chapter  
33 10.77 RCW has been made for involuntary medication of a defendant for  
34 the purpose of competency restoration.

35 (iii) Disclosure under this subsection is mandatory for the  
36 purpose of the federal health insurance portability and  
37 accountability act;

38 (e)(i) When a mental health professional or designated crisis  
39 responder is requested by a representative of a law enforcement or  
40 corrections agency, including a police officer, sheriff, community

1 corrections officer, a municipal attorney, or prosecuting attorney to  
2 undertake an investigation or provide treatment under RCW 71.05.150,  
3 10.31.110, or 71.05.153, the mental health professional or designated  
4 crisis responder shall, if requested to do so, advise the  
5 representative in writing of the results of the investigation  
6 including a statement of reasons for the decision to detain or  
7 release the person investigated. The written report must be submitted  
8 within seventy-two hours of the completion of the investigation or  
9 the request from the law enforcement or corrections representative,  
10 whichever occurs later.

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

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

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

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

37 (ii) Disclosure under this subsection is mandatory for the  
38 purposes of the federal health insurance portability and  
39 accountability act;

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

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

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

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

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

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

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

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

37 (iii) Disclosure under this subsection is mandatory for the  
38 purposes of the federal health insurance portability and  
39 accountability act;

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

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

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

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

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

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

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

36 (A) A (~~licensed mental health professional or a health care~~  
37 ~~professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,~~  
38 ~~18.79, or 18.36A RCW~~) health care provider who is providing care to  
39 a (~~person~~) patient, or to whom a (~~person~~) patient has been  
40 referred for evaluation or treatment(~~(7)~~); or

1       (B) Any other person who is working in a care coordinator role  
2 for a health care facility or health care provider or is under an  
3 agreement pursuant to the federal health insurance portability and  
4 accountability act with a health care facility or health care  
5 provider and requires the information and records related to mental  
6 health services to assure coordinated care and treatment of that  
7 ((person)) patient.

8       (ii) A person authorized to use or disclose information and  
9 records related to mental health services under this subsection  
10 (2)(t) must take appropriate steps to protect the information and  
11 records relating to mental health services.

12       (iii) Psychotherapy notes may not be released without  
13 authorization of the ((person)) patient who is the subject of the  
14 request for release of information;

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

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

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

33       (x) To staff members of the protection and advocacy agency or to  
34 staff members of a private, nonprofit corporation for the purpose of  
35 protecting and advocating the rights of persons with mental disorders  
36 or developmental disabilities. Resource management services may limit  
37 the release of information to the name, birthdate, and county of  
38 residence of the patient, information regarding whether the patient  
39 was voluntarily admitted, or involuntarily committed, the date and  
40 place of admission, placement, or commitment, the name and address of

1 a guardian of the patient, and the date and place of the guardian's  
2 appointment. Any staff member who wishes to obtain additional  
3 information must notify the patient's resource management services in  
4 writing of the request and of the resource management services' right  
5 to object. The staff member shall send the notice by mail to the  
6 guardian's address. If the guardian does not object in writing within  
7 fifteen days after the notice is mailed, the staff member may obtain  
8 the additional information. If the guardian objects in writing within  
9 fifteen days after the notice is mailed, the staff member may not  
10 obtain the additional information;

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

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

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

36 I recognize that unauthorized release of confidential information  
37 may subject me to civil liability under the provisions of state law.

38 /s/ . . . . ."

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

5 (3) Whenever federal law or federal regulations restrict the  
6 release of information contained in the information and records  
7 related to mental health services of any patient who receives  
8 treatment for chemical dependency, the department may restrict the  
9 release of the information as necessary to comply with federal law  
10 and regulations.

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

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

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

39 (i) One thousand dollars; or



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

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

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

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

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

14 NEW SECTION. **Sec. 3.** Section 1 of this act expires April 1,  
15 2018.

16 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect April  
17 1, 2018.

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