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HOUSE BILL 2387

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State of Washington                      58th Legislature                      2004 Regular Session

By Representatives Carrell, Talcott, Bush, Lantz, Cox, Pearson, McMahan, Kristiansen, Mielke, Boldt, Morrell, Orcutt and Ahern

Read first time 01/13/2004. Referred to Committee on Health Care.

1            AN ACT Relating to the release of patient records for the purpose  
2 of restoring state mental health hospital cemeteries; reenacting and  
3 amending RCW 71.05.390; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.** The legislature finds that social stigmas  
6 surrounding mental illness have prevented patients buried in the state  
7 mental health hospital cemeteries from being properly memorialized.  
8 From 1887 to 1953, the state buried many of the patients who died while  
9 in residence at the three state mental health hospitals on hospital  
10 grounds. In order to honor these patients, the legislature intends  
11 that the state be allowed to release records necessary to appropriately  
12 mark their resting place.

13            **Sec. 2.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000  
14 c 74 s 7 are each reenacted and amended to read as follows:

15            Except as provided in this section, the fact of admission and all  
16 information and records compiled, obtained, or maintained in the course  
17 of providing services to either voluntary or involuntary recipients of  
18 services at public or private agencies shall be confidential.

1 Information and records may be disclosed only:

2 (1) In communications between qualified professional persons to  
3 meet the requirements of this chapter, in the provision of services or  
4 appropriate referrals, or in the course of guardianship proceedings.  
5 The consent of the patient, or his or her guardian, shall be obtained  
6 before information or records may be disclosed by a professional person  
7 employed by a facility unless provided to a professional person: (a)  
8 Employed by the facility; (b) who has medical responsibility for the  
9 patient's care; (c) who is a county designated mental health  
10 professional; (d) who is providing services under chapter 71.24 RCW;  
11 (e) who is employed by a state or local correctional facility where the  
12 person is confined; or (f) who is providing evaluation, treatment, or  
13 follow-up services under chapter 10.77 RCW.

14 (2) When the communications regard the special needs of a patient  
15 and the necessary circumstances giving rise to such needs and the  
16 disclosure is made by a facility providing outpatient services to the  
17 operator of a care facility in which the patient resides.

18 (3) When the person receiving services, or his or her guardian,  
19 designates persons to whom information or records may be released, or  
20 if the person is a minor, when his or her parents make such  
21 designation.

22 (4) To the extent necessary for a recipient to make a claim, or for  
23 a claim to be made on behalf of a recipient for aid, insurance, or  
24 medical assistance to which he or she may be entitled.

25 (5) For either program evaluation or research, or both: PROVIDED,  
26 That the secretary adopts rules for the conduct of the evaluation or  
27 research, or both. Such rules shall include, but need not be limited  
28 to, the requirement that all evaluators and researchers must sign an  
29 oath of confidentiality substantially as follows:

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

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

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and

1 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
2 to records regarding the committed person's treatment and prognosis,  
3 medication, behavior problems, and other records relevant to the issue  
4 of whether treatment less restrictive than inpatient treatment is in  
5 the best interest of the committed person or others. Information shall  
6 be disclosed only after giving notice to the committed person and the  
7 person's counsel.

8 (10) To appropriate law enforcement agencies and to a person, when  
9 the identity of the person is known to the public or private agency,  
10 whose health and safety has been threatened, or who is known to have  
11 been repeatedly harassed, by the patient. The person may designate a  
12 representative to receive the disclosure. The disclosure shall be made  
13 by the professional person in charge of the public or private agency or  
14 his or her designee and shall include the dates of commitment,  
15 admission, discharge, or release, authorized or unauthorized absence  
16 from the agency's facility, and only such other information that is  
17 pertinent to the threat or harassment. The decision to disclose or not  
18 shall not result in civil liability for the agency or its employees so  
19 long as the decision was reached in good faith and without gross  
20 negligence.

21 (11) To appropriate law enforcement agencies, upon request, all  
22 necessary and relevant information in the event of a crisis or emergent  
23 situation that poses a significant and imminent risk to the public.  
24 The decision to disclose or not shall not result in civil liability for  
25 the mental health service provider or its employees so long as the  
26 decision was reached in good faith and without gross negligence.

27 (12) To the persons designated in RCW 71.05.425 for the purposes  
28 described in that section.

29 (13) Civil liability and immunity for the release of information  
30 about a particular person who is committed to the department under RCW  
31 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as  
32 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

33 (14) To a patient's next of kin, guardian, or conservator, if any,  
34 in the event of death, as provided in RCW 71.05.400.

35 (15) To the department of health for the purposes of determining  
36 compliance with state or federal licensure, certification, or  
37 registration rules or laws. However, the information and records

1 obtained under this subsection are exempt from public inspection and  
2 copying pursuant to chapter 42.17 RCW.

3 (16) To mark headstones or otherwise memorialize patients interred  
4 at state mental health hospital cemeteries. The department of social  
5 and health services shall make available the name, date of birth, and  
6 date of death of patients buried in state mental health hospital  
7 cemeteries fifty years after the death of a patient.

8 The fact of admission, as well as all records, files, evidence,  
9 findings, or orders made, prepared, collected, or maintained pursuant  
10 to this chapter shall not be admissible as evidence in any legal  
11 proceeding outside this chapter without the written consent of the  
12 person who was the subject of the proceeding except in a subsequent  
13 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
14 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter  
15 10.77 RCW due to incompetency to stand trial or in a civil commitment  
16 proceeding pursuant to chapter 71.09 RCW. The records and files  
17 maintained in any court proceeding pursuant to this chapter shall be  
18 confidential and available subsequent to such proceedings only to the  
19 person who was the subject of the proceeding or his or her attorney.  
20 In addition, the court may order the subsequent release or use of such  
21 records or files only upon good cause shown if the court finds that  
22 appropriate safeguards for strict confidentiality are and will be  
23 maintained.

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