
SENATE BILL 6565

State of Washington

64th Legislature

2016 Regular Session

By Senator O'Ban

Read first time 01/26/16. Referred to Committee on Health Care.

1 AN ACT Relating to allowing the disclosure of health care
2 information with persons with a close relationship with a patient;
3 amending RCW 70.02.050; and reenacting and amending RCW 70.02.230.

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

5 **Sec. 1.** RCW 70.02.050 and 2014 c 220 s 6 are each amended to
6 read as follows:

7 (1) A health care provider or health care facility may disclose
8 health care information, except for information and records related
9 to sexually transmitted diseases which are addressed in RCW
10 70.02.220, about a patient without the patient's authorization to the
11 extent a recipient needs to know the information, if the disclosure
12 is:

13 (a) To a person who the provider or facility reasonably believes
14 is providing health care to the patient;

15 (b) To any other person who requires health care information for
16 health care education, or to provide planning, quality assurance,
17 peer review, or administrative, legal, financial, actuarial services
18 to, or other health care operations for or on behalf of the health
19 care provider or health care facility; or for assisting the health
20 care provider or health care facility in the delivery of health care

1 and the health care provider or health care facility reasonably
2 believes that the person:

3 (i) Will not use or disclose the health care information for any
4 other purpose; and

5 (ii) Will take appropriate steps to protect the health care
6 information;

7 (c) To any person, including a patient's family, friends, or
8 other persons involved in the patient's care, if the health care
9 provider or health care facility reasonably believes that disclosure
10 will avoid or minimize an imminent danger to the health or safety of
11 the patient or any other individual, however there is no obligation
12 under this chapter on the part of the provider or facility to so
13 disclose. The fact of admission to a provider for mental health
14 services and all information and records compiled, obtained, or
15 maintained in the course of providing mental health services to
16 either voluntary or involuntary recipients of services at public or
17 private agencies is not subject to disclosure unless disclosure is
18 permitted in RCW 70.02.230; or

19 (d) For payment, including information necessary for a recipient
20 to make a claim, or for a claim to be made on behalf of a recipient
21 for aid, insurance, or medical assistance to which he or she may be
22 entitled.

23 (2) A health care provider shall disclose health care
24 information, except for information and records related to sexually
25 transmitted diseases, unless otherwise authorized in RCW 70.02.220,
26 about a patient without the patient's authorization if the disclosure
27 is:

28 (a) To federal, state, or local public health authorities, to the
29 extent the health care provider is required by law to report health
30 care information; when needed to determine compliance with state or
31 federal licensure, certification or registration rules or laws, or to
32 investigate unprofessional conduct or ability to practice with
33 reasonable skill and safety under chapter 18.130 RCW. Any health care
34 information obtained under this subsection is exempt from public
35 inspection and copying pursuant to chapter 42.56 RCW; or

36 (b) When needed to protect the public health.

37 **Sec. 2.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are
38 each reenacted and amended to read as follows:

1 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
2 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and
3 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,
4 the fact of admission to a provider for mental health services and
5 all information and records compiled, obtained, or maintained in the
6 course of providing mental health services to either voluntary or
7 involuntary recipients of services at public or private agencies must
8 be confidential.

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

12 (a) In communications between qualified professional persons to
13 meet the requirements of chapter 71.05 RCW, in the provision of
14 services or appropriate referrals, or in the course of guardianship
15 proceedings if provided to a professional person:

16 (i) Employed by the facility;

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

18 (iii) Who is a designated mental health professional;

19 (iv) Who is providing services under chapter 71.24 RCW;

20 (v) Who is employed by a state or local correctional facility
21 where the person is confined or supervised; or

22 (vi) Who is providing evaluation, treatment, or follow-up
23 services under chapter 10.77 RCW;

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

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

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

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

37 (B) A statement evaluating the mental and physical condition of
38 the patient, and a statement of the probable duration of the
39 patient's confinement, if such information is requested by the next

1 of kin, attorney, personal representative, guardian, or conservator;
2 and

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

6 (d)(i) To the courts as necessary to the administration of
7 chapter 71.05 RCW or to a court ordering an evaluation or treatment
8 under chapter 10.77 RCW solely for the purpose of preventing the
9 entry of any evaluation or treatment order that is inconsistent with
10 any order entered under chapter 71.05 RCW.

11 (ii) To a court or its designee in which a motion under chapter
12 10.77 RCW has been made for involuntary medication of a defendant for
13 the purpose of competency restoration.

14 (iii) Disclosure under this subsection is mandatory for the
15 purpose of the federal health insurance portability and
16 accountability act;

17 (e)(i) When a mental health professional is requested by a
18 representative of a law enforcement or corrections agency, including
19 a police officer, sheriff, community corrections officer, a municipal
20 attorney, or prosecuting attorney to undertake an investigation or
21 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
22 mental health professional shall, if requested to do so, advise the
23 representative in writing of the results of the investigation
24 including a statement of reasons for the decision to detain or
25 release the person investigated. The written report must be submitted
26 within seventy-two hours of the completion of the investigation or
27 the request from the law enforcement or corrections representative,
28 whichever occurs later.

29 (ii) Disclosure under this subsection is mandatory for the
30 purposes of the federal health insurance portability and
31 accountability act;

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

33 (g) To the prosecuting attorney as necessary to carry out the
34 responsibilities of the office under RCW 71.05.330(2),
35 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided
36 access to records regarding the committed person's treatment and
37 prognosis, medication, behavior problems, and other records relevant
38 to the issue of whether treatment less restrictive than inpatient
39 treatment is in the best interest of the committed person or others.

1 Information must be disclosed only after giving notice to the
2 committed person and the person's counsel;

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

16 (ii) Disclosure under this subsection is mandatory for the
17 purposes of the federal health insurance portability and
18 accountability act;

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

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

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

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

37 (l) To mark headstones or otherwise memorialize patients interred
38 at state hospital cemeteries. The department of social and health
39 services shall make available the name, date of birth, and date of

1 death of patients buried in state hospital cemeteries fifty years
2 after the death of a patient;

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

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

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

16 (iii) Disclosure under this subsection is mandatory for the
17 purposes of the federal health insurance portability and
18 accountability act;

19 (n) When a patient would otherwise be subject to the provisions
20 of this section and disclosure is necessary for the protection of the
21 patient or others due to his or her unauthorized disappearance from
22 the facility, and his or her whereabouts is unknown, notice of the
23 disappearance, along with relevant information, may be made to
24 relatives, the department of corrections when the person is under the
25 supervision of the department, and governmental law enforcement
26 agencies designated by the physician or psychiatric advanced
27 registered nurse practitioner in charge of the patient or the
28 professional person in charge of the facility, or his or her
29 professional designee;

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

31 (p) To qualified staff members of the department, to the director
32 of behavioral health organizations, to resource management services
33 responsible for serving a patient, or to service providers designated
34 by resource management services as necessary to determine the
35 progress and adequacy of treatment and to determine whether the
36 person should be transferred to a less restrictive or more
37 appropriate treatment modality or facility;

38 (q) Within the mental health service agency where the patient is
39 receiving treatment, confidential information may be disclosed to
40 persons employed, serving in bona fide training programs, or

1 participating in supervised volunteer programs, at the facility when
2 it is necessary to perform their duties;

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

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

12 (t) Consistent with the requirements of the federal health
13 information portability and accountability act, to a licensed mental
14 health professional or a health care professional licensed under
15 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is
16 providing care to a person, or to whom a person has been referred for
17 evaluation or treatment, to assure coordinated care and treatment of
18 that person. Psychotherapy notes may not be released without
19 authorization of the person who is the subject of the request for
20 release of information;

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

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

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

39 (x) To staff members of the protection and advocacy agency or to
40 staff members of a private, nonprofit corporation for the purpose of

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

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

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

35 "As a condition of conducting evaluation or research concerning
36 persons who have received services from (fill in the facility,
37 agency, or person) I,, agree not to divulge, publish, or
38 otherwise make known to unauthorized persons or the public any
39 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)(a) A health care provider may communicate with a patient's
11 family, friends, or other persons who are involved in the patient's
12 care if the patient is present and has the capacity to make health
13 care decisions, so long as the patient does not object. Where a
14 patient is not present or is incapacitated, a health care provider
15 may share the patient's information with family, friends, or others
16 involved in the patient's care or payment for care, as long as the
17 health care provider determines, based on professional judgment, that
18 doing so is in the best interests of the patient. Circumstances where
19 the patient is incapacitated may include circumstances in which the
20 patient is suffering from temporary psychosis or is under the
21 influence of drugs or alcohol. When someone other than a friend or
22 family member is involved, the health care provider must be
23 reasonably sure that the patient asked the person to be involved in
24 his or her care or payment for care. In all cases, disclosures to
25 family members, friends, or other persons involved in the patient's
26 care or payment for care must be limited to only the protected health
27 information directly relevant to the person's involvement in the
28 patient's care or payment for care.

29 (b) With respect to communications with a patient's family,
30 friends, or persons involved in a patient's care, state privacy laws
31 may not be interpreted to place any restriction on these
32 communications that is more stringent than the requirements of
33 applicable federal health information privacy laws.

34 (c) A parent who initiates treatment for a minor child under
35 Washington's parent-initiated treatment law, RCW 71.34.600 through
36 71.34.660, must be considered to be the personal representative of
37 the child by the health care provider with respect to sharing of
38 patient information.

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

7 ~~((4))~~ (5) Civil liability and immunity for the release of
8 information about a particular person who is committed to the
9 department of social and health services under RCW 71.05.280(3) and
10 71.05.320(~~((3))~~) (4)(c) after dismissal of a sex offense as defined
11 in RCW 9.94A.030, is governed by RCW 4.24.550.

12 ~~((5))~~ (6) The fact of admission to a provider of mental health
13 services, as well as all records, files, evidence, findings, or
14 orders made, prepared, collected, or maintained pursuant to chapter
15 71.05 RCW are not admissible as evidence in any legal proceeding
16 outside that chapter without the written authorization of the person
17 who was the subject of the proceeding except as provided in RCW
18 70.02.260, in a subsequent criminal prosecution of a person committed
19 pursuant to RCW 71.05.280(3) or 71.05.320(~~((3))~~) (4)(c) on charges
20 that were dismissed pursuant to chapter 10.77 RCW due to incompetency
21 to stand trial, in a civil commitment proceeding pursuant to chapter
22 71.09 RCW, or, in the case of a minor, a guardianship or dependency
23 proceeding. The records and files maintained in any court proceeding
24 pursuant to chapter 71.05 RCW must be confidential and available
25 subsequent to such proceedings only to the person who was the subject
26 of the proceeding or his or her attorney. In addition, the court may
27 order the subsequent release or use of such records or files only
28 upon good cause shown if the court finds that appropriate safeguards
29 for strict confidentiality are and will be maintained.

30 ~~((6))~~ (7)(a) Except as provided in RCW 4.24.550, any person may
31 bring an action against an individual who has willfully released
32 confidential information or records concerning him or her in
33 violation of the provisions of this section, for the greater of the
34 following amounts:

35 (i) One thousand dollars; or

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

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

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

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

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

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