

1 6121.E AMH HC H4942.1

2 ESB 6121 - H COMM AMD  
3 By Committee on Health Care

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5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 71.05.390 and 1990 c 3 s 112 are each amended to read  
8 as follows:

9 The fact of admission and all information and records compiled,  
10 obtained, or maintained in the course of providing services to either  
11 voluntary or involuntary recipients of services at public or private  
12 agencies shall be confidential.

13 Information and records may be disclosed only:

14 (1) In communications between qualified professional persons to  
15 meet the requirements of this chapter, in the provision of services or  
16 appropriate referrals, or in the course of guardianship proceedings.  
17 The consent of the patient, or his or her guardian, (~~(must)~~) shall be  
18 obtained before information or records may be disclosed by a  
19 professional person employed by a facility to a professional person,  
20 not employed by the facility, who does not have the medical  
21 responsibility for the patient's care or who is not a designated county  
22 mental health professional or who is not involved in providing services  
23 under the community mental health services act, chapter 71.24 RCW.

24 (2) 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 outpatient services to the  
27 operator of a care facility in which the patient resides.

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

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

7 (5) For program evaluation and/or research: PROVIDED, That the  
8 secretary of social and health services adopts rules for the conduct of  
9 such evaluation and/or research. Such rules shall include, but need  
10 not be limited to, the requirement that all evaluators and researchers  
11 must sign an oath of confidentiality substantially as follows:

12 "As a condition of conducting evaluation or research concerning  
13 persons who have received services from (fill in the facility, agency,  
14 or person) I, ....., agree not to divulge, publish, or  
15 otherwise make known to unauthorized persons or the public any  
16 information obtained in the course of such evaluation or research  
17 regarding persons who have received services such that the person who  
18 received such services is identifiable.

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

21 /s/....."

22 (6) To the courts as necessary to the administration of this  
23 chapter.

24 (7) To law enforcement officers, public health officers, or  
25 personnel of the department of corrections or the indeterminate  
26 sentence review board for persons who are the subject of the records  
27 and who are committed to the custody of the department of corrections  
28 or indeterminate sentence review board which information or records are

1 necessary to carry out the responsibilities of their office. Except  
2 for dissemination of information released pursuant to RCW 71.05.425 and  
3 4.24.550, regarding persons committed under this chapter under RCW  
4 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as  
5 defined in RCW 9.94A.030, the extent of information that may be  
6 released is limited as follows:

7 (a) Only the fact, place, and date of involuntary admission, the  
8 fact and date of discharge, and the last known address shall be  
9 disclosed upon request; and

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

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

23 (8) To the attorney of the detained person.

24 (9) To the prosecuting attorney as necessary to carry out the  
25 responsibilities of the office under RCW 71.05.330(2) and  
26 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access  
27 to records regarding the committed person's treatment and prognosis,  
28 medication, behavior problems, and other records relevant to the issue  
29 of whether treatment less restrictive than inpatient treatment is in  
30 the best interest of the committed person or others. Information shall

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

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

15 (11) To the persons designated in RCW 71.05.425 for the purposes  
16 described in that section.

17 (12) Civil liability and immunity for the release of information  
18 about a particular person who is committed to the department under RCW  
19 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as  
20 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

23 (14) To the department of health of the purposes of determining  
24 compliance with state or federal licensure, certification, or  
25 registration rules or laws. However, the information and records  
26 obtained under this subsection are exempt from public inspection and  
27 copying pursuant to chapter 42.17 RCW.

28 The fact of admission, as well as all records, files, evidence,  
29 findings, or orders made, prepared, collected, or maintained pursuant  
30 to this chapter shall not be admissible as evidence in any legal

1 proceeding outside this chapter without the written consent of the  
2 person who was the subject of the proceeding except in a subsequent  
3 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)  
4 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter  
5 10.77 RCW due to incompetency to stand trial or in a civil commitment  
6 proceeding pursuant to chapter 71.09 RCW. The records and files  
7 maintained in any court proceeding pursuant to this chapter shall be  
8 confidential and available subsequent to such proceedings only to the  
9 person who was the subject of the proceeding or his attorney. In  
10 addition, the court may order the subsequent release or use of such  
11 records or files only upon good cause shown if the court finds that  
12 appropriate safeguards for strict confidentiality are and will be  
13 maintained."

14 **"Sec. 2.** RCW 71.05.400 and 1974 ex.s. c 115 s 1 are each amended  
15 to read as follows:

16 (1) A public or private agency shall release to a patient's next of  
17 kin, attorney, guardian, or conservator, if any,

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

20 (b) A statement evaluating the mental and physical condition of the  
21 patient, and a statement of the probable duration of the patient's  
22 confinement, if such information is requested by the next of kin,  
23 attorney, guardian, or conservator; and such other information  
24 requested by the next of kin or attorney as may be necessary to decide  
25 whether or not proceedings should be instituted to appoint a guardian  
26 or conservator.

27 (2) Upon the death of a patient, his next of kin, guardian, or  
28 conservator, if any, shall be notified.

1 Next of kin who are of legal age and competent shall be notified  
2 under this section in the following order: Spouse, parents, children,  
3 brothers and sisters, and other relatives according to the degree of  
4 relation. Access to all records and information compiled, obtained, or  
5 maintained in the course of providing services to a deceased patient  
6 shall be governed by RCW 70.02.140."

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10 On page 1, line 1 of the title, after "records;" strike the  
11 remainder of the title and insert "and amending RCW 71.05.390 and  
12 71.05.400."