
ENGROSSED SENATE BILL 6121

State of Washington 52nd Legislature 1992 Regular Session

By Senators Bauer, West, M. Kreidler, Amondson, Wojahn and L. Smith

Read first time 01/16/92. Referred to Committee on Health & Long-Term Care.

1 AN ACT Relating to the release of patient information and records;
2 and amending RCW 71.05.390 and 71.05.400.

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

4 **Sec. 1.** RCW 71.05.390 and 1990 c 3 s 112 are each amended to read
5 as follows:

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

10 Information and records may be disclosed only:

11 (1) In communications between qualified professional persons to
12 meet the requirements of this chapter, in the provision of services or
13 appropriate referrals, or in the course of guardianship proceedings.
14 The consent of the patient, or his guardian, must be obtained before

1 information or records may be disclosed by a professional person
2 employed by a facility to a professional person, not employed by the
3 facility, who does not have the medical responsibility for the
4 patient's care or who is not a designated county mental health
5 professional or who is not involved in providing services under the
6 community mental health services act, chapter 71.24 RCW.

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

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

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

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

22 "As a condition of conducting evaluation or research concerning
23 persons who have received services from (fill in the facility, agency,
24 or person) I,, agree not to divulge, publish, or
25 otherwise make known to unauthorized persons or the public any
26 information obtained in the course of such evaluation or research
27 regarding persons who have received services such that the person who
28 received such services is identifiable.

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

3 /s/....."

4 (6) To the courts as necessary to the administration of this
5 chapter.

6 (7) To law enforcement officers, public health officers, or
7 personnel of the department of corrections or the indeterminate
8 sentence review board for persons who are the subject of the records
9 and who are committed to the custody of the department of corrections
10 or indeterminate sentence review board which information or records are
11 necessary to carry out the responsibilities of their office. Except
12 for dissemination of information released pursuant to RCW 71.05.425 and
13 4.24.550, regarding persons committed under this chapter under RCW
14 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
15 defined in RCW 9.94A.030, the extent of information that may be
16 released is limited as follows:

17 (a) Only the fact, place, and date of involuntary admission, the
18 fact and date of discharge, and the last known address shall be
19 disclosed upon request; and

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

24 (c) Additional information shall be disclosed only after giving
25 notice to said person and his counsel and upon a showing of clear,
26 cogent and convincing evidence that such information is necessary and
27 that appropriate safeguards for strict confidentiality are and will be
28 maintained: PROVIDED HOWEVER, That in the event the said person has
29 escaped from custody, said notice prior to disclosure is not necessary

1 and that the facility from which the person escaped shall include an
2 evaluation as to whether the person is of danger to persons or property
3 and has a propensity toward violence.

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

5 (9) To the prosecuting attorney as necessary to carry out the
6 responsibilities of the office under RCW 71.05.330(2) and
7 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
8 to records regarding the committed person's treatment and prognosis,
9 medication, behavior problems, and other records relevant to the issue
10 of whether treatment less restrictive than inpatient treatment is in
11 the best interest of the committed person or others. Information shall
12 be disclosed only after giving notice to the committed person and the
13 person's counsel.

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

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

28 (12) Civil liability and immunity for the release of information
29 about a particular person who is committed to the department under RCW

1 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
2 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

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

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

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

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

27 (b) A statement evaluating the mental and physical condition of the
28 patient, and a statement of the probable duration of the patient's
29 confinement, if such information is requested by the next of kin,

1 attorney, guardian, or conservator; and such other information
2 requested by the next of kin or attorney as may be necessary to decide
3 whether or not proceedings should be instituted to appoint a guardian
4 or conservator.

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

7 (3) Access to all records and information compiled, obtained, or
8 maintained in the course of providing services to a deceased patient
9 shall be governed by RCW 70.02.140.

10 Next of kin who are of legal age and competent shall be notified
11 under this section in the following order: Spouse, parents, children,
12 brothers and sisters, and other relatives according to the degree of
13 relation.