
SENATE BILL 6721

State of Washington

58th Legislature

2004 Regular Session

By Senators Regala, Stevens, Hargrove and Benton

Read first time 02/04/2004. Referred to Committee on Children & Family Services & Corrections.

1 AN ACT Relating to resolving conflicting amendments and effective
2 dates to RCW 71.05.390, which concerns disclosure of confidential
3 information and records; and reenacting RCW 71.05.390.

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

5 **Sec. 1.** RCW 71.05.390 and 2000 c 94 s 9, 2000 c 75 s 6, and 2000
6 c 74 s 7 are each reenacted to read as follows:

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

11 Information and records may be disclosed only:

12 (1) In communications between qualified professional persons to
13 meet the requirements of this chapter, in the provision of services or
14 appropriate referrals, or in the course of guardianship proceedings.
15 The consent of the patient, or his or her guardian, shall be obtained
16 before information or records may be disclosed by a professional person
17 employed by a facility unless provided to a professional person: (a)
18 Employed by the facility; (b) who has medical responsibility for the
19 patient's care; (c) who is a county designated mental health

1 professional; (d) who is providing services under chapter 71.24 RCW;
2 (e) who is employed by a state or local correctional facility where the
3 person is confined; or (f) who is providing evaluation, treatment, or
4 follow-up services under chapter 10.77 RCW.

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

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

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

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

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

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

30 /s/

31 (6) To the courts as necessary to the administration of this
32 chapter or to a court ordering an evaluation or treatment under chapter
33 10.77 RCW solely for the purpose of preventing the entry of any
34 evaluation or treatment order that is inconsistent with any order
35 entered under this chapter.

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

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

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

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

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

29 (9) To the prosecuting attorney as necessary to carry out the
30 responsibilities of the office under RCW 71.05.330(2) and
31 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access
32 to records regarding the committed person's treatment and prognosis,
33 medication, behavior problems, and other records relevant to the issue
34 of whether treatment less restrictive than inpatient treatment is in
35 the best interest of the committed person or others. Information shall
36 be disclosed only after giving notice to the committed person and the
37 person's counsel.

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

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

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

22 (13) Civil liability and immunity for the release of information
23 about a particular person who is committed to the department under RCW
24 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
25 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

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

28 (15) To the department of health for the purposes of determining
29 compliance with state or federal licensure, certification, or
30 registration rules or laws. However, the information and records
31 obtained under this subsection are exempt from public inspection and
32 copying pursuant to chapter 42.17 RCW.

33 The fact of admission, as well as all records, files, evidence,
34 findings, or orders made, prepared, collected, or maintained pursuant
35 to this chapter shall not be admissible as evidence in any legal
36 proceeding outside this chapter without the written consent of the
37 person who was the subject of the proceeding except in a subsequent
38 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)

1 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
2 10.77 RCW due to incompetency to stand trial or in a civil commitment
3 proceeding pursuant to chapter 71.09 RCW. The records and files
4 maintained in any court proceeding pursuant to this chapter shall be
5 confidential and available subsequent to such proceedings only to the
6 person who was the subject of the proceeding or his or her attorney.
7 In addition, the court may order the subsequent release or use of such
8 records or files only upon good cause shown if the court finds that
9 appropriate safeguards for strict confidentiality are and will be
10 maintained.

--- END ---