
HOUSE BILL 2339

State of Washington 63rd Legislature 2014 Regular Session

By Representatives Cody and Ormsby

Read first time 01/15/14. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to disclosure of health care information; amending
2 RCW 70.02.010, 70.02.020, 70.02.050, 70.02.200, 70.02.210, 70.02.230,
3 70.02.270, 70.02.280, 70.02.310, 70.02.340, 71.05.445, 70.02.030, and
4 70.02.045; and providing an effective date.

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

6 **Sec. 1.** RCW 70.02.010 and 2013 c 200 s 1 are each amended to read
7 as follows:

8 The definitions in this section apply throughout this chapter
9 unless the context clearly requires otherwise.

10 (1) "Admission" has the same meaning as in RCW 71.05.020.

11 (2) "Audit" means an assessment, evaluation, determination, or
12 investigation of a health care provider by a person not employed by or
13 affiliated with the provider to determine compliance with:

14 (a) Statutory, regulatory, fiscal, medical, or scientific
15 standards;

16 (b) A private or public program of payments to a health care
17 provider; or

18 (c) Requirements for licensing, accreditation, or certification.

19 (3) "Commitment" has the same meaning as in RCW 71.05.020.

1 (4) "Custody" has the same meaning as in RCW 71.05.020.

2 (5) "Deidentified" means health information that does not identify
3 an individual and with respect to which there is no reasonable basis to
4 believe that the information can be used to identify an individual.

5 (6) "Department" means the department of social and health
6 services.

7 (7) "Designated mental health professional" has the same meaning as
8 in RCW 71.05.020 or 71.34.020, as applicable.

9 (8) "Detention" or "detain" has the same meaning as in RCW
10 71.05.020.

11 (9) "Directory information" means information disclosing the
12 presence, and for the purpose of identification, the name, location
13 within a health care facility, and the general health condition of a
14 particular patient who is a patient in a health care facility or who is
15 currently receiving emergency health care in a health care facility.

16 (10) "Discharge" has the same meaning as in RCW 71.05.020.

17 (11) "Evaluation and treatment facility" has the same meaning as in
18 RCW 71.05.020 or 71.34.020, as applicable.

19 (12) "Federal, state, or local law enforcement authorities" means
20 an officer of any agency or authority in the United States, a state, a
21 tribe, a territory, or a political subdivision of a state, a tribe, or
22 a territory who is empowered by law to: (a) Investigate or conduct an
23 official inquiry into a potential criminal violation of law; or (b)
24 prosecute or otherwise conduct a criminal proceeding arising from an
25 alleged violation of law.

26 (13) "General health condition" means the patient's health status
27 described in terms of "critical," "poor," "fair," "good," "excellent,"
28 or terms denoting similar conditions.

29 (14) "Health care" means any care, service, or procedure provided
30 by a health care provider:

31 (a) To diagnose, treat, or maintain a patient's physical or mental
32 condition; or

33 (b) That affects the structure or any function of the human body.

34 (15) "Health care facility" means a hospital, clinic, nursing home,
35 laboratory, office, or similar place where a health care provider
36 provides health care to patients.

37 (16) "Health care information" means any information, whether oral
38 or recorded in any form or medium, that identifies or can readily be

1 associated with the identity of a patient and directly relates to the
2 patient's health care, including a patient's deoxyribonucleic acid and
3 identified sequence of chemical base pairs. The term includes any
4 required accounting of disclosures of health care information.

5 (17) "Health care operations" means any of the following activities
6 of a health care provider, health care facility, or third-party payor
7 to the extent that the activities are related to functions that make an
8 entity a health care provider, a health care facility, or a third-party
9 payor:

10 (a) Conducting: Quality assessment and improvement activities,
11 including outcomes evaluation and development of clinical guidelines,
12 if the obtaining of generalizable knowledge is not the primary purpose
13 of any studies resulting from such activities; population-based
14 activities relating to improving health or reducing health care costs,
15 protocol development, case management and care coordination, contacting
16 of health care providers and patients with information about treatment
17 alternatives; and related functions that do not include treatment;

18 (b) Reviewing the competence or qualifications of health care
19 professionals, evaluating practitioner and provider performance and
20 third-party payor performance, conducting training programs in which
21 students, trainees, or practitioners in areas of health care learn
22 under supervision to practice or improve their skills as health care
23 providers, training of nonhealth care professionals, accreditation,
24 certification, licensing, or credentialing activities;

25 (c) Underwriting, premium rating, and other activities relating to
26 the creation, renewal, or replacement of a contract of health insurance
27 or health benefits, and ceding, securing, or placing a contract for
28 reinsurance of risk relating to claims for health care, including stop-
29 loss insurance and excess of loss insurance, if any applicable legal
30 requirements are met;

31 (d) Conducting or arranging for medical review, legal services, and
32 auditing functions, including fraud and abuse detection and compliance
33 programs;

34 (e) Business planning and development, such as conducting cost-
35 management and planning-related analyses related to managing and
36 operating the health care facility or third-party payor, including
37 formulary development and administration, development, or improvement
38 of methods of payment or coverage policies; and

1 (f) Business management and general administrative activities of
2 the health care facility, health care provider, or third-party payor
3 including, but not limited to:

4 (i) Management activities relating to implementation of and
5 compliance with the requirements of this chapter;

6 (ii) Customer service, including the provision of data analyses for
7 policy holders, plan sponsors, or other customers, provided that health
8 care information is not disclosed to such policy holder, plan sponsor,
9 or customer;

10 (iii) Resolution of internal grievances;

11 (iv) The sale, transfer, merger, or consolidation of all or part of
12 a health care provider, health care facility, or third-party payor with
13 another health care provider, health care facility, or third-party
14 payor or an entity that following such activity will become a health
15 care provider, health care facility, or third-party payor, and due
16 diligence related to such activity; and

17 (v) Consistent with applicable legal requirements, creating
18 deidentified health care information or a limited dataset for the
19 benefit of the health care provider, health care facility, or third-
20 party payor.

21 (18) "Health care provider" means a person who is licensed,
22 certified, registered, or otherwise authorized by the law of this state
23 to provide health care in the ordinary course of business or practice
24 of a profession.

25 (19) "Human immunodeficiency virus" or "HIV" has the same meaning
26 as in RCW 70.24.017.

27 (20) "Imminent" has the same meaning as in RCW 71.05.020.

28 (21) "Information and records related to mental health services"
29 means a type of health care information that relates to all information
30 and records(~~(, including mental health treatment records,)~~) compiled,
31 obtained, or maintained in the course of providing services by a mental
32 health service agency(~~(, as defined in this section)~~) to persons who
33 are receiving or have received services for mental illness. The term
34 includes mental health information contained in a medical bill,
35 registration records, as defined in RCW 71.05.020, and all other
36 records regarding the person maintained by the department, by regional
37 support networks and their staff, and by treatment facilities. ((This
38 may)) The term further includes documents of legal proceedings under

1 chapter 71.05, 71.34, or 10.77 RCW, or somatic health care information.
2 For health care information maintained by a hospital as defined in RCW
3 70.41.020 or a health care facility or health care provider that
4 participates with a hospital in an organized health care arrangement
5 defined under federal law, "information and records related to mental
6 health services" is limited to information and records of services
7 provided by a mental health professional or information and records of
8 services created by a hospital-operated community mental health program
9 as defined in RCW 71.24.025(6).

10 (22) "Information and records related to sexually transmitted
11 diseases" means a type of health care information that relates to the
12 identity of any person upon whom an HIV antibody test or other sexually
13 transmitted infection test is performed, the results of such tests, and
14 any information relating to diagnosis of or treatment for any confirmed
15 sexually transmitted infections.

16 (23) "Institutional review board" means any board, committee, or
17 other group formally designated by an institution, or authorized under
18 federal or state law, to review, approve the initiation of, or conduct
19 periodic review of research programs to assure the protection of the
20 rights and welfare of human research subjects.

21 (24) "Legal counsel" has the same meaning as in RCW 71.05.020.

22 (25) "Local public health officer" has the same meaning as in RCW
23 70.24.017.

24 (26) "Maintain," as related to health care information, means to
25 hold, possess, preserve, retain, store, or control that information.

26 (27) "Mental health professional" has the same meaning as in RCW
27 71.05.020.

28 (28) "Mental health service agency" means a public or private
29 agency that provides services to persons with mental disorders as
30 defined under RCW 71.05.020 or 71.34.020 and receives funding from
31 public sources. This includes evaluation and treatment facilities as
32 defined in RCW 71.34.020, community mental health service delivery
33 systems, or community mental health programs, as defined in RCW
34 71.24.025, and facilities conducting competency evaluations and
35 restoration under chapter 10.77 RCW.

36 (~~(29) ("Mental health treatment records" include registration~~
37 ~~records, as defined in RCW 71.05.020, and all other records concerning~~
38 ~~persons who are receiving or who at any time have received services for~~

1 ~~mental illness, which are maintained by the department, by regional~~
2 ~~support networks and their staff, and by treatment facilities. "Mental~~
3 ~~health treatment records" include mental health information contained~~
4 ~~in a medical bill including, but not limited to, mental health drugs,~~
5 ~~a mental health diagnosis, provider name, and dates of service stemming~~
6 ~~from a medical service. "Mental health treatment records" do not~~
7 ~~include notes or records maintained for personal use by a person~~
8 ~~providing treatment services for the department, regional support~~
9 ~~networks, or a treatment facility if the notes or records are not~~
10 ~~available to others.~~

11 ~~(+30+))~~ "Minor" has the same meaning as in RCW 71.34.020.

12 ~~((+31+))~~ (30) "Parent" has the same meaning as in RCW 71.34.020.

13 ~~((+32+))~~ (31) "Patient" means an individual who receives or has
14 received health care. The term includes a deceased individual who has
15 received health care.

16 ~~((+33+))~~ (32) "Payment" means:

17 (a) The activities undertaken by:

18 (i) A third-party payor to obtain premiums or to determine or
19 fulfill its responsibility for coverage and provision of benefits by
20 the third-party payor; or

21 (ii) A health care provider, health care facility, or third-party
22 payor, to obtain or provide reimbursement for the provision of health
23 care; and

24 (b) The activities in (a) of this subsection that relate to the
25 patient to whom health care is provided and that include, but are not
26 limited to:

27 (i) Determinations of eligibility or coverage, including
28 coordination of benefits or the determination of cost-sharing amounts,
29 and adjudication or subrogation of health benefit claims;

30 (ii) Risk adjusting amounts due based on enrollee health status and
31 demographic characteristics;

32 (iii) Billing, claims management, collection activities, obtaining
33 payment under a contract for reinsurance, including stop-loss insurance
34 and excess of loss insurance, and related health care data processing;

35 (iv) Review of health care services with respect to medical
36 necessity, coverage under a health plan, appropriateness of care, or
37 justification of charges;

1 (v) Utilization review activities, including precertification and
2 preauthorization of services, and concurrent and retrospective review
3 of services; and

4 (vi) Disclosure to consumer reporting agencies of any of the
5 following health care information relating to collection of premiums or
6 reimbursement:

7 (A) Name and address;

8 (B) Date of birth;

9 (C) Social security number;

10 (D) Payment history;

11 (E) Account number; and

12 (F) Name and address of the health care provider, health care
13 facility, and/or third-party payor.

14 (~~(34)~~) (33) "Person" means an individual, corporation, business
15 trust, estate, trust, partnership, association, joint venture,
16 government, governmental subdivision or agency, or any other legal or
17 commercial entity.

18 (~~(35)~~) (34) "Professional person" has the same meaning as in RCW
19 71.05.020.

20 (~~(36)~~) (35) "Psychiatric advanced registered nurse practitioner"
21 has the same meaning as in RCW 71.05.020.

22 (~~(37)~~) (36) "Reasonable fee" means the charges for duplicating or
23 searching the record, but shall not exceed sixty-five cents per page
24 for the first thirty pages and fifty cents per page for all other
25 pages. In addition, a clerical fee for searching and handling may be
26 charged not to exceed fifteen dollars. These amounts shall be adjusted
27 biennially in accordance with changes in the consumer price index, all
28 consumers, for Seattle-Tacoma metropolitan statistical area as
29 determined by the secretary of health. However, where editing of
30 records by a health care provider is required by statute and is done by
31 the provider personally, the fee may be the usual and customary charge
32 for a basic office visit.

33 (~~(38)~~) (37) "Release" has the same meaning as in RCW 71.05.020.

34 (~~(39)~~) (38) "Resource management services" has the same meaning
35 as in RCW 71.05.020.

36 (~~(40)~~) (39) "Serious violent offense" has the same meaning as in
37 RCW 71.05.020.

1 ((+41+)) (40) "Sexually transmitted infection" or "sexually
2 transmitted disease" has the same meaning as "sexually transmitted
3 disease" in RCW 70.24.017.

4 ((+42+)) (41) "Test for a sexually transmitted disease" has the
5 same meaning as in RCW 70.24.017.

6 ((+43+)) (42) "Third-party payor" means an insurer regulated under
7 Title 48 RCW authorized to transact business in this state or other
8 jurisdiction, including a health care service contractor, and health
9 maintenance organization; or an employee welfare benefit plan,
10 excluding fitness or wellness plans; or a state or federal health
11 benefit program.

12 ((+44+)) (43) "Treatment" means the provision, coordination, or
13 management of health care and related services by one or more health
14 care providers or health care facilities, including the coordination or
15 management of health care by a health care provider or health care
16 facility with a third party; consultation between health care providers
17 or health care facilities relating to a patient; or the referral of a
18 patient for health care from one health care provider or health care
19 facility to another.

20 **Sec. 2.** RCW 70.02.020 and 2013 c 200 s 2 are each amended to read
21 as follows:

22 (1) Except as authorized elsewhere in this chapter, a health care
23 provider, an individual who assists a health care provider in the
24 delivery of health care, or an agent and employee of a health care
25 provider may not disclose health care information about a patient to
26 any other person without the patient's written authorization. A
27 disclosure made under a patient's written authorization must conform to
28 the authorization.

29 (2) ~~((A patient has a right to receive an accounting of all
30 disclosures of mental health treatment records except disclosures made
31 under RCW 71.05.425.~~

32 (+3+)) A patient has a right to receive an accounting of disclosures
33 of health care information(~~(, except for mental health treatment
34 records which are addressed in subsection (2) of this section,)~~) made
35 by a health care provider or a health care facility in the six years
36 before the date on which the accounting is requested, except for
37 disclosures:

- 1 (a) To carry out treatment, payment, and health care operations;
2 (b) To the patient of health care information about him or her;
3 (c) Incident to a use or disclosure that is otherwise permitted or
4 required;
5 (d) Pursuant to an authorization where the patient authorized the
6 disclosure of health care information about himself or herself;
7 (e) Of directory information;
8 (f) To persons involved in the patient's care;
9 (g) For national security or intelligence purposes if an accounting
10 of disclosures is not permitted by law;
11 (h) To correctional institutions or law enforcement officials if an
12 accounting of disclosures is not permitted by law; and
13 (i) Of a limited data set that excludes direct identifiers of the
14 patient or of relatives, employers, or household members of the
15 patient.

16 **Sec. 3.** RCW 70.02.050 and 2013 c 200 s 3 are each amended to read
17 as follows:

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

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

25 (b) To any other person who requires health care information for
26 health care education, or to provide planning, quality assurance, peer
27 review, or administrative, legal, financial, actuarial services to, or
28 other health care operations for or on behalf of the health care
29 provider or health care facility; or for assisting the health care
30 provider or health care facility in the delivery of health care and the
31 health care provider or health care facility reasonably believes that
32 the person:

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

35 (ii) Will take appropriate steps to protect the health care
36 information;

1 (c) To any person if the health care provider or health care
2 facility reasonably believes that disclosure will avoid or minimize an
3 imminent danger to the health or safety of the patient or any other
4 individual, however there is no obligation under this chapter on the
5 part of the provider or facility to so disclose. The fact of admission
6 to a provider for mental health services and all information and
7 records compiled, obtained, or maintained in the course of providing
8 mental health services to either voluntary or involuntary recipients of
9 services at public or private agencies is not subject to disclosure
10 unless disclosure is permitted in RCW 70.02.230; or

11 ~~(d) ((To an official of a penal or other custodial institution in
12 which the patient is detained; or~~

13 ~~(e)))~~ For payment, including information necessary for a recipient
14 to make a claim, or for a claim to be made on behalf of a recipient for
15 aid, insurance, or medical assistance to which he or she may be
16 entitled.

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

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

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

30 **Sec. 4.** RCW 70.02.200 and 2013 c 200 s 4 are each amended to read
31 as follows:

32 (1) In addition to the disclosures authorized by RCW 70.02.050 and
33 70.02.210, a health care provider or health care facility may disclose
34 health care information, except for information and records related to
35 sexually transmitted diseases and information related to mental health
36 services which are addressed by RCW 70.02.220 through 70.02.260, about
37 a patient without the patient's authorization, to:

1 (a) Any other health care provider or health care facility
2 reasonably believed to have previously provided health care to the
3 patient, to the extent necessary to provide health care to the patient,
4 unless the patient has instructed the health care provider or health
5 care facility in writing not to make the disclosure;

6 (b) Immediate family members of the patient, including a patient's
7 state registered domestic partner, or any other individual with whom
8 the patient is known to have a close personal relationship, if made in
9 accordance with good medical or other professional practice, unless the
10 patient has instructed the health care provider or health care facility
11 in writing not to make the disclosure;

12 (c) A health care provider or health care facility who is the
13 successor in interest to the health care provider or health care
14 facility maintaining the health care information;

15 (d) A person who obtains information for purposes of an audit, if
16 that person agrees in writing to:

17 (i) Remove or destroy, at the earliest opportunity consistent with
18 the purpose of the audit, information that would enable the patient to
19 be identified; and

20 (ii) Not to disclose the information further, except to accomplish
21 the audit or report unlawful or improper conduct involving fraud in
22 payment for health care by a health care provider or patient, or other
23 unlawful conduct by the health care provider;

24 (e) Provide directory information, unless the patient has
25 instructed the health care provider or health care facility not to make
26 the disclosure;

27 (f) Fire, police, sheriff, or other public authority, that brought,
28 or caused to be brought, the patient to the health care facility or
29 health care provider if the disclosure is limited to the patient's
30 name, residence, sex, age, occupation, condition, diagnosis, estimated
31 or actual discharge date, or extent and location of injuries as
32 determined by a physician, and whether the patient was conscious when
33 admitted;

34 (g) Federal, state, or local law enforcement authorities and the
35 health care provider, health care facility, or third-party payor
36 believes in good faith that the health care information disclosed
37 constitutes evidence of criminal conduct that occurred on the premises

1 of the health care provider, health care facility, or third-party
2 payor; (~~and~~)

3 (h) Another health care provider, health care facility, or third-
4 party payor for the health care operations of the health care provider,
5 health care facility, or third-party payor that receives the
6 information, if each entity has or had a relationship with the patient
7 who is the subject of the health care information being requested, the
8 health care information pertains to such relationship, and the
9 disclosure is for the purposes described in RCW 70.02.010(17) (a) and
10 (b); and

11 (i) An official of a penal or other custodial institution in which
12 the patient is detained.

13 (2) In addition to the disclosures required by RCW 70.02.050 and
14 70.02.210, a health care provider shall disclose health care
15 information, except for information related to sexually transmitted
16 diseases and information related to mental health services which are
17 addressed by RCW 70.02.220 through 70.02.260, about a patient without
18 the patient's authorization if the disclosure is:

19 (a) To federal, state, or local law enforcement authorities to the
20 extent the health care provider is required by law;

21 (b) To federal, state, or local law enforcement authorities, upon
22 receipt of a written or oral request made to a nursing supervisor,
23 administrator, or designated privacy official, in a case in which the
24 patient is being treated or has been treated for a bullet wound,
25 gunshot wound, powder burn, or other injury arising from or caused by
26 the discharge of a firearm, or an injury caused by a knife, an ice
27 pick, or any other sharp or pointed instrument which federal, state, or
28 local law enforcement authorities reasonably believe to have been
29 intentionally inflicted upon a person, or a blunt force injury that
30 federal, state, or local law enforcement authorities reasonably believe
31 resulted from a criminal act, the following information, if known:

32 (i) The name of the patient;

33 (ii) The patient's residence;

34 (iii) The patient's sex;

35 (iv) The patient's age;

36 (v) The patient's condition;

37 (vi) The patient's diagnosis, or extent and location of injuries as
38 determined by a health care provider;

- 1 (vii) Whether the patient was conscious when admitted;
- 2 (viii) The name of the health care provider making the
3 determination in (b)(v), (vi), and (vii) of this subsection;
- 4 (ix) Whether the patient has been transferred to another facility;
- 5 and
- 6 (x) The patient's discharge time and date;
- 7 (c) Pursuant to compulsory process in accordance with RCW
8 70.02.060.

9 **Sec. 5.** RCW 70.02.210 and 2013 c 200 s 5 are each amended to read
10 as follows:

11 (1)(a) A health care provider or health care facility may disclose
12 health care information about a patient without the patient's
13 authorization to the extent a recipient needs to know the information,
14 if the disclosure is for use in a research project that an
15 institutional review board has determined:

16 ~~((a))~~ (i) Is of sufficient importance to outweigh the intrusion
17 into the privacy of the patient that would result from the disclosure;

18 ~~((b))~~ (ii) Is impracticable without the use or disclosure of the
19 health care information in individually identifiable form;

20 ~~((c))~~ (iii) Contains reasonable safeguards to protect the
21 information from redisclosure;

22 ~~((d))~~ (iv) Contains reasonable safeguards to protect against
23 identifying, directly or indirectly, any patient in any report of the
24 research project; and

25 ~~((e))~~ (v) Contains procedures to remove or destroy at the
26 earliest opportunity, consistent with the purposes of the project,
27 information that would enable the patient to be identified, unless an
28 institutional review board authorizes retention of identifying
29 information for purposes of another research project.

30 (b) Nothing in this subsection (1) limits disclosures for research
31 purposes related to chemical dependency as authorized by chapter 70.96A
32 RCW or federal law.

33 (2) In addition to the disclosures required by RCW 70.02.050 and
34 70.02.200, a health care provider or health care facility shall
35 disclose health care information about a patient without the patient's
36 authorization if:

1 (a) The disclosure is to county coroners and medical examiners for
2 the investigations of deaths;

3 (b) The disclosure is to a procurement organization or person to
4 whom a body part passes for the purpose of examination necessary to
5 assure the medical suitability of the body part; or

6 (c) The disclosure is to a person subject to the jurisdiction of
7 the federal food and drug administration in regards to a food and drug
8 administration-regulated product or activity for which that person has
9 responsibility for quality, safety, or effectiveness of activities.

10 **Sec. 6.** RCW 70.02.230 and 2013 c 200 s 7 are each amended to read
11 as follows:

12 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
13 70.96A.150, 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260,
14 or pursuant to a valid authorization under RCW 70.02.030, the fact of
15 admission to a provider for mental health services and all information
16 and records compiled, obtained, or maintained in the course of
17 providing mental health services to either voluntary or involuntary
18 recipients of services at public or private agencies must be
19 confidential.

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

23 (a) In communications between qualified professional persons to
24 meet the requirements of chapter 71.05 RCW, in the provision of
25 services or appropriate referrals, or in the course of guardianship
26 proceedings if provided to a professional person:

27 (i) Employed by the facility;

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

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

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

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

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

35 (b) When the communications regard the special needs of a patient
36 and the necessary circumstances giving rise to such needs and the

1 disclosure is made by a facility providing services to the operator of
2 a facility in which the patient resides or will reside;

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

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

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

12 (B) A statement evaluating the mental and physical condition of the
13 patient, and a statement of the probable duration of the patient's
14 confinement, if such information is requested by the next of kin,
15 attorney, personal representative, guardian, or conservator; and

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

19 (d)(i) To the courts as necessary to the administration of chapter
20 71.05 RCW or to a court ordering an evaluation or treatment under
21 chapter 10.77 RCW solely for the purpose of preventing the entry of any
22 evaluation or treatment order that is inconsistent with any order
23 entered under chapter 71.05 RCW.

24 (ii) To a court or its designee in which a motion under chapter
25 10.77 RCW has been made for involuntary medication of a defendant for
26 the purpose of competency restoration.

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

29 (e)(i) When a mental health professional is requested by a
30 representative of a law enforcement or corrections agency, including a
31 police officer, sheriff, community corrections officer, a municipal
32 attorney, or prosecuting attorney to undertake an investigation or
33 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the
34 mental health professional shall, if requested to do so, advise the
35 representative in writing of the results of the investigation including
36 a statement of reasons for the decision to detain or release the person
37 investigated. The written report must be submitted within seventy-two

1 hours of the completion of the investigation or the request from the
2 law enforcement or corrections representative, whichever occurs later.

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

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

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

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

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

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

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

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

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

11 (l) To mark headstones or otherwise memorialize patients interred
12 at state hospital cemeteries. The department of social and health
13 services shall make available the name, date of birth, and date of
14 death of patients buried in state hospital cemeteries fifty years after
15 the death of a patient;

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

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

24 (ii) The law enforcement and prosecuting attorneys may only release
25 the information obtained to the person's attorney as required by court
26 rule and to a jury or judge, if a jury is waived, that presides over
27 any trial at which the person is charged with violating RCW
28 9.41.040(2)(a)(ii);

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

32 (n) When a patient would otherwise be subject to the provisions of
33 this section and disclosure is necessary for the protection of the
34 patient or others due to his or her unauthorized disappearance from the
35 facility, and his or her whereabouts is unknown, notice of the
36 disappearance, along with relevant information, may be made to
37 relatives, the department of corrections when the person is under the
38 supervision of the department, and governmental law enforcement

1 agencies designated by the physician or psychiatric advanced registered
2 nurse practitioner in charge of the patient or the professional person
3 in charge of the facility, or his or her professional designee;

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

5 (p) To qualified staff members of the department, to the director
6 of regional support networks, to resource management services
7 responsible for serving a patient, or to service providers designated
8 by resource management services as necessary to determine the progress
9 and adequacy of treatment and to determine whether the person should be
10 transferred to a less restrictive or more appropriate treatment
11 modality or facility;

12 (q) Within the (~~treatment facility~~) mental health service agency
13 where the patient is receiving treatment, confidential information may
14 be disclosed to persons employed, serving in bona fide training
15 programs, or participating in supervised volunteer programs, at the
16 facility when it is necessary to perform their duties;

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

20 (s) To a licensed physician or psychiatric advanced registered
21 nurse practitioner who has determined that the life or health of the
22 person is in danger and that treatment without the information and
23 records related to mental health services (~~contained in the mental~~
24 ~~health treatment records~~) could be injurious to the patient's health.
25 Disclosure must be limited to the portions of the records necessary to
26 meet the medical emergency;

27 (t) Consistent with the requirements of the federal health
28 information portability and accountability act, to a licensed mental
29 health professional or a health care professional licensed under
30 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is
31 providing care to a person, or to whom a person has been referred for
32 evaluation or treatment, to assure coordinated care and treatment of
33 that person. Psychotherapy notes, as defined in 45 C.F.R. Sec.
34 164.501, may not be released without authorization of the person who is
35 the subject of the request for release of information;

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

1 (v) To a facility that is to receive a person who is involuntarily
2 committed under chapter 71.05 RCW, or upon transfer of the person from
3 one evaluated and treatment facility to another. The release of
4 records under this subsection is limited to the (~~mental health~~
5 ~~treatment records~~) information and records related to mental health
6 services required by law, a record or summary of all somatic
7 treatments, and a discharge summary. The discharge summary may include
8 a statement of the patient's problem, the treatment goals, the type of
9 treatment which has been provided, and recommendation for future
10 treatment, but may not include the patient's complete treatment record;

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

16 (x) To staff members of the protection and advocacy agency or to
17 staff members of a private, nonprofit corporation for the purpose of
18 protecting and advocating the rights of persons with mental disorders
19 or developmental disabilities. Resource management services may limit
20 the release of information to the name, birthdate, and county of
21 residence of the patient, information regarding whether the patient was
22 voluntarily admitted, or involuntarily committed, the date and place of
23 admission, placement, or commitment, the name and address of a guardian
24 of the patient, and the date and place of the guardian's appointment.
25 Any staff member who wishes to obtain additional information must
26 notify the patient's resource management services in writing of the
27 request and of the resource management services' right to object. The
28 staff member shall send the notice by mail to the guardian's address.
29 If the guardian does not object in writing within fifteen days after
30 the notice is mailed, the staff member may obtain the additional
31 information. If the guardian objects in writing within fifteen days
32 after the notice is mailed, the staff member may not obtain the
33 additional information;

34 (y) To all current treating providers of the patient with
35 prescriptive authority who have written a prescription for the patient
36 within the last twelve months. For purposes of coordinating health
37 care, the department may release without written authorization of the
38 patient, information acquired for billing and collection purposes as

1 described in RCW 70.02.050(1)((+e+)) (d). The department shall notify
2 the patient that billing and collection information has been released
3 to named providers, and provide the substance of the information
4 released and the dates of such release. The department may not release
5 counseling, inpatient psychiatric hospitalization, or drug and alcohol
6 treatment information without a signed written release from the client;

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

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

20 I recognize that unauthorized release of confidential information
21 may subject me to civil liability under the provisions of state law.
22 /s/"

23 (ii) Nothing in this chapter may be construed to prohibit the
24 compilation and publication of statistical data for use by government
25 or researchers under standards, including standards to assure
26 maintenance of confidentiality, set forth by the secretary.

27 (3) Whenever federal law or federal regulations restrict the
28 release of information contained in the (~~treatment—records~~)
29 information and records related to mental health services of any
30 patient who receives treatment for chemical dependency, the department
31 may restrict the release of the information as necessary to comply with
32 federal law and regulations.

33 (4) Civil liability and immunity for the release of information
34 about a particular person who is committed to the department of social
35 and health services under RCW 71.05.280(3) and 71.05.320(3)(c) after
36 dismissal of a sex offense as defined in RCW 9.94A.030, is governed by
37 RCW 4.24.550.

1 (5) The fact of admission to a provider of mental health services,
2 as well as all records, files, evidence, findings, or orders made,
3 prepared, collected, or maintained pursuant to chapter 71.05 RCW are
4 not admissible as evidence in any legal proceeding outside that chapter
5 without the written authorization of the person who was the subject of
6 the proceeding except as provided in RCW 70.02.260, in a subsequent
7 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
8 or 71.05.320(3)(c) on charges that were dismissed pursuant to chapter
9 10.77 RCW due to incompetency to stand trial, in a civil commitment
10 proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor,
11 a guardianship or dependency proceeding. The records and files
12 maintained in any court proceeding pursuant to chapter 71.05 RCW must
13 be confidential and available subsequent to such proceedings only to
14 the person who was the subject of the proceeding or his or her
15 attorney. In addition, the court may order the subsequent release or
16 use of such records or files only upon good cause shown if the court
17 finds that appropriate safeguards for strict confidentiality are and
18 will be maintained.

19 (6)(a) Except as provided in RCW 4.24.550, any person may bring an
20 action against an individual who has willfully released confidential
21 information or records concerning him or her in violation of the
22 provisions of this section, for the greater of the following amounts:

- 23 (i) One thousand dollars; or
- 24 (ii) Three times the amount of actual damages sustained, if any.

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

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

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

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

1 **Sec. 7.** RCW 70.02.270 and 2013 c 200 s 11 are each amended to read
2 as follows:

3 (1) No person who receives health care information for health care
4 education, or to provide planning, quality assurance, peer review, or
5 administrative, legal, financial, or actuarial services, or other
6 health care operations for or on behalf of a health care provider or
7 health care facility, may use or disclose any health care information
8 received from the health care provider or health care facility in any
9 manner that ~~((is inconsistent with the duties of the health care
10 provider or health care facility under this chapter))~~ would violate the
11 requirements of this chapter if performed by the health care provider
12 or health care facility.

13 (2) A health care provider or health care facility that has a
14 contractual relationship with a person to provide services described
15 under subsection (1) of this section ~~((must))~~ may terminate the
16 contractual relationship with the person if the health care provider or
17 health care facility learns that the person has engaged in a pattern of
18 activity that violates the person's duties under subsection (1) of this
19 section, unless the person took reasonable steps to correct the breach
20 of confidentiality or has discontinued the violating activity.

21 **Sec. 8.** RCW 70.02.280 and 2013 c 200 s 12 are each amended to read
22 as follows:

23 A health care provider, health care facility, and their assistants,
24 employees, agents, and contractors may not:

25 (1) Use or disclose health care information for marketing or fund-
26 raising purposes, unless permitted by federal law;

27 ~~((Sell health care information to a third party, except in a
28 form that is deidentified and aggregated; or~~

29 ~~(3))~~ Sell health care information to a third party, except ~~((for~~
30 ~~the following purposes))~~:

31 (a) For purposes of treatment or payment;

32 (b) For purposes of sale, transfer, merger, or consolidation of a
33 business;

34 (c) For purposes of remuneration to a third party for services;

35 (d) As disclosures are required by law;

36 (e) For purposes of providing access to or accounting of
37 disclosures to an individual;

- 1 (f) For public health purposes;
- 2 (g) For research;
- 3 (h) With an individual's authorization;
- 4 (i) Where a reasonable cost-based fee is paid to prepare and
- 5 transmit health information, where authority to disclose the
- 6 information is provided in this chapter; or
- 7 (j) In a format that is deidentified and aggregated.

8 **Sec. 9.** RCW 70.02.310 and 2013 c 200 s 15 are each amended to read
9 as follows:

10 (1) Resource management services shall establish procedures to
11 provide reasonable and timely access to information and records related
12 to mental health services for an individual (~~mental health treatment~~
13 ~~records~~). However, access may not be denied at any time to records of
14 all medications and somatic treatments received by the person.

15 (2) Following discharge, a person who has received mental health
16 services has a right to a complete record of all medications and
17 somatic treatments prescribed during evaluation, admission, or
18 commitment and to a copy of the discharge summary prepared at the time
19 of his or her discharge. A reasonable and uniform charge for
20 reproduction may be assessed.

21 (3) (~~Mental health treatment records~~) Information and records
22 related to mental health services may be modified prior to inspection
23 to protect the confidentiality of other patients or the names of any
24 other persons referred to in the record who gave information on the
25 condition that his or her identity remain confidential. Entire
26 documents may not be withheld to protect such confidentiality.

27 (4) At the time of discharge resource management services shall
28 inform all persons who have received mental health services of their
29 rights as provided in this chapter and RCW 71.05.620.

30 **Sec. 10.** RCW 70.02.340 and 2013 c 200 s 18 are each amended to
31 read as follows:

32 The department of social and health services shall adopt rules
33 related to the disclosure of (~~mental health treatment records~~)
34 information and records related to mental health services in this
35 chapter.

1 **Sec. 11.** RCW 71.05.445 and 2013 c 200 s 31 are each amended to
2 read as follows:

3 (1)(a) When a mental health service provider conducts its initial
4 assessment for a person receiving court-ordered treatment, the service
5 provider shall inquire and shall be told by the offender whether he or
6 she is subject to supervision by the department of corrections.

7 (b) When a person receiving court-ordered treatment or treatment
8 ordered by the department of corrections discloses to his or her mental
9 health service provider that he or she is subject to supervision by the
10 department of corrections, the mental health service provider shall
11 notify the department of corrections that he or she is treating the
12 offender and shall notify the offender that his or her community
13 corrections officer will be notified of the treatment, provided that if
14 the offender has received relief from disclosure pursuant to RCW
15 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the
16 mental health service provider with a copy of the order granting relief
17 from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132,
18 the mental health service provider is not required to notify the
19 department of corrections that the mental health service provider is
20 treating the offender. The notification may be written or oral and
21 shall not require the consent of the offender. If an oral notification
22 is made, it must be confirmed by a written notification. For purposes
23 of this section, a written notification includes notification by e-mail
24 or facsimile, so long as the notifying mental health service provider
25 is clearly identified.

26 (2) The information to be released to the department of corrections
27 shall include all relevant records and reports, as defined by rule,
28 necessary for the department of corrections to carry out its duties.

29 (3) The department and the department of corrections, in
30 consultation with regional support networks, mental health service
31 providers as defined in RCW 71.05.020, mental health consumers, and
32 advocates for persons with mental illness, shall adopt rules to
33 implement the provisions of this section related to the type and scope
34 of information to be released. These rules shall:

35 (a) Enhance and facilitate the ability of the department of
36 corrections to carry out its responsibility of planning and ensuring
37 community protection with respect to persons subject to sentencing

1 under chapter 9.94A or 9.95 RCW, including accessing and releasing or
2 disclosing information of persons who received mental health services
3 as a minor; and

4 (b) Establish requirements for the notification of persons under
5 the supervision of the department of corrections regarding the
6 provisions of this section.

7 (4) The information received by the department of corrections under
8 this section shall remain confidential and subject to the limitations
9 on disclosure outlined in chapter 71.05 RCW, except as provided in RCW
10 72.09.585.

11 (5) No mental health service provider or individual employed by a
12 mental health service provider shall be held responsible for
13 information released to or used by the department of corrections under
14 the provisions of this section or rules adopted under this section.

15 (6) Whenever federal law or federal regulations restrict the
16 release of information (~~contained in the treatment records of~~) and
17 records related to mental health services for any patient who receives
18 treatment for alcoholism or drug dependency, the release of the
19 information may be restricted as necessary to comply with federal law
20 and regulations.

21 (7) This section does not modify the terms and conditions of
22 disclosure of information related to sexually transmitted diseases
23 under chapter 70.24 RCW.

24 (8) The department shall, subject to available resources,
25 electronically, or by the most cost-effective means available, provide
26 the department of corrections with the names, last dates of services,
27 and addresses of specific regional support networks and mental health
28 service providers that delivered mental health services to a person
29 subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between
30 the departments.

31 **Sec. 12.** RCW 70.02.030 and 2005 c 468 s 3 are each amended to read
32 as follows:

33 (1) A patient may authorize a health care provider or health care
34 facility to disclose the patient's health care information. A health
35 care provider or health care facility shall honor an authorization and,
36 if requested, provide a copy of the recorded health care information

1 unless the health care provider or health care facility denies the
2 patient access to health care information under RCW 70.02.090.

3 (2) A health care provider or health care facility may charge a
4 reasonable fee for providing the health care information and is not
5 required to honor an authorization until the fee is paid.

6 (3) To be valid, a disclosure authorization to a health care
7 provider or health care facility shall:

8 (a) Be in writing, dated, and signed by the patient;

9 (b) Identify the nature of the information to be disclosed;

10 (c) Identify the name and institutional affiliation of the person
11 or class of persons to whom the information is to be disclosed;

12 (d) Identify the provider or class of providers who are to make the
13 disclosure;

14 (e) Identify the patient; and

15 (f) Contain an expiration date or an expiration event that relates
16 to the patient or the purpose of the use or disclosure.

17 (4) Unless disclosure without authorization is otherwise permitted
18 under RCW 70.02.050 or the federal health insurance portability and
19 accountability act of 1996 and its implementing regulations, an
20 authorization may permit the disclosure of health care information to
21 a class of persons that includes:

22 (a) Researchers if the health care provider or health care facility
23 obtains the informed consent for the use of the patient's health care
24 information for research purposes; or

25 (b) Third-party payors if the information is only disclosed for
26 payment purposes.

27 (5) Except as provided by this chapter, the signing of an
28 authorization by a patient is not a waiver of any rights a patient has
29 under other statutes, the rules of evidence, or common law.

30 (6) When an authorization permits the disclosure of health care
31 information to a financial institution or an employer of the patient
32 for purposes other than payment, the authorization as it pertains to
33 those disclosures shall expire (~~((ninety days))~~) one year after the
34 signing of the authorization, unless the authorization is renewed by
35 the patient.

36 (7) A health care provider or health care facility shall retain the
37 original or a copy of each authorization or revocation in conjunction
38 with any health care information from which disclosures are made.

1 (8) Where the patient is under the supervision of the department of
2 corrections, an authorization signed pursuant to this section for
3 health care information related to mental health or drug or alcohol
4 treatment expires at the end of the term of supervision, unless the
5 patient is part of a treatment program that requires the continued
6 exchange of information until the end of the period of treatment.

7 **Sec. 13.** RCW 70.02.045 and 2000 c 5 s 2 are each amended to read
8 as follows:

9 Third-party payors shall not release health care information
10 disclosed under this chapter, except (~~to the extent that health care~~
11 ~~providers are authorized to do so under RCW 70.02.050~~) as permitted
12 under this chapter.

13 NEW SECTION. **Sec. 14.** This act takes effect July 1, 2014.

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