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HOUSE BILL 1477

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State of Washington                      65th Legislature                      2017 Regular Session

By Representatives Kilduff, Muri, Lytton, Stambaugh, Orwall,  
McDonald, Robinson, Lovick, Goodman, and Sells

1            AN ACT Relating to disclosure of health-related information with  
2 persons with a close relationship with a patient; amending RCW  
3 70.02.010, 70.02.050, and 70.02.230; reenacting and amending RCW  
4 70.02.010 and 70.02.230; adding a new section to chapter 70.02 RCW;  
5 providing an effective date; and providing an expiration date.

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

7            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 70.02  
8 RCW to read as follows:

9            (1)(a) A health care provider may use or disclose protected  
10 health information of an individual without obtaining an  
11 authorization from the individual or the individual's personal  
12 representative if the conditions in (b) of this subsection are met  
13 and:

14            (i) The disclosure is to a family member, other relative, a close  
15 personal friend, or other person identified by the individual, and  
16 the protected health information is directly relevant to the person's  
17 involvement with the individual's health care; or

18            (ii) The disclosure is for the purpose of notifying a family  
19 member, a personal representative of the individual, or another  
20 person responsible for the care of the individual or the individual's  
21 location, general condition, or death.

1 (b) A health care provider may make the disclosures described in  
2 (a) of this subsection if:

3 (i) The individual is not present or obtaining the individual's  
4 authorization is not practicable due to the individual's incapacity  
5 or an emergency circumstance, and in the exercise of professional  
6 judgment and based on reasonable inferences, the health care provider  
7 determines that the disclosure is in the best interests of the  
8 individual; or

9 (ii) The individual is present and the health care provider gives  
10 the individual an opportunity to object to the disclosure, and the  
11 individual does not express an objection, or the health care provider  
12 reasonably infers from the circumstances, based on the exercise of  
13 professional judgment, that the individual does not object to the  
14 disclosure.

15 (2) With respect to an individual who is being treated for a  
16 mental illness, the protected health information disclosed under this  
17 section may include, to the extent consistent with the health care  
18 provider's professional judgment and standards of ethical conduct:

19 (a) The individual's diagnoses and the treatment recommendations;

20 (b) Issues concerning the safety of the individual, including  
21 risk factors for suicide, steps that can be taken to make the  
22 individual's home safer, and a safety plan to monitor and support the  
23 individual;

24 (c) Information about resources that are available in the  
25 community to help the individual, such as case management and support  
26 groups; and

27 (d) The process to ensure that the individual safely transitions  
28 to a higher or lower level of care, including an interim safety plan.

29 (3) Any disclosure of protected health information under this  
30 section must be limited to the minimum necessary to accomplish the  
31 purpose of the disclosure.

32 (4) A health care provider is not subject to any civil liability  
33 for making a disclosure in accordance with this section.

34 **Sec. 2.** RCW 70.02.010 and 2014 c 225 s 70 and 2014 c 220 s 4 are  
35 each reenacted and amended to read as follows:

36 The definitions in this section apply throughout this chapter  
37 unless the context clearly requires otherwise.

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

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

4 (a) Statutory, regulatory, fiscal, medical, or scientific  
5 standards;

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

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

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

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

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

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

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

19 (8) "Detention" or "detain" has the same meaning as in RCW  
20 71.05.020.

21 (9) "Directory information" means information disclosing the  
22 presence, and for the purpose of identification, the name, location  
23 within a health care facility, and the general health condition of a  
24 particular patient who is a patient in a health care facility or who  
25 is currently receiving emergency health care in a health care  
26 facility.

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

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

30 (12) "Federal, state, or local law enforcement authorities" means  
31 an officer of any agency or authority in the United States, a state,  
32 a tribe, a territory, or a political subdivision of a state, a tribe,  
33 or a territory who is empowered by law to: (a) Investigate or conduct  
34 an official inquiry into a potential criminal violation of law; or  
35 (b) prosecute or otherwise conduct a criminal proceeding arising from  
36 an alleged violation of law.

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

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

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

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

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

9 (16) "Health care information" means any information, whether  
10 oral or recorded in any form or medium, that identifies or can  
11 readily be associated with the identity of a patient and directly  
12 relates to the patient's health care, including a patient's  
13 deoxyribonucleic acid and identified sequence of chemical base pairs.  
14 The term includes any required accounting of disclosures of health  
15 care information.

16 (17) "Health care operations" means any of the following  
17 activities of a health care provider, health care facility, or third-  
18 party payor to the extent that the activities are related to  
19 functions that make an entity a health care provider, a health care  
20 facility, or a third-party payor:

21 (a) Conducting: Quality assessment and improvement activities,  
22 including outcomes evaluation and development of clinical guidelines,  
23 if the obtaining of generalizable knowledge is not the primary  
24 purpose of any studies resulting from such activities; population-  
25 based activities relating to improving health or reducing health care  
26 costs, protocol development, case management and care coordination,  
27 contacting of health care providers and patients with information  
28 about treatment alternatives; and related functions that do not  
29 include treatment;

30 (b) Reviewing the competence or qualifications of health care  
31 professionals, evaluating practitioner and provider performance and  
32 third-party payor performance, conducting training programs in which  
33 students, trainees, or practitioners in areas of health care learn  
34 under supervision to practice or improve their skills as health care  
35 providers, training of nonhealth care professionals, accreditation,  
36 certification, licensing, or credentialing activities;

37 (c) Underwriting, premium rating, and other activities relating  
38 to the creation, renewal, or replacement of a contract of health  
39 insurance or health benefits, and ceding, securing, or placing a  
40 contract for reinsurance of risk relating to claims for health care,

1 including stop-loss insurance and excess of loss insurance, if any  
2 applicable legal requirements are met;

3 (d) Conducting or arranging for medical review, legal services,  
4 and auditing functions, including fraud and abuse detection and  
5 compliance programs;

6 (e) Business planning and development, such as conducting cost-  
7 management and planning-related analyses related to managing and  
8 operating the health care facility or third-party payor, including  
9 formulary development and administration, development, or improvement  
10 of methods of payment or coverage policies; and

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

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

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

20 (iii) Resolution of internal grievances;

21 (iv) The sale, transfer, merger, or consolidation of all or part  
22 of a health care provider, health care facility, or third-party payor  
23 with another health care provider, health care facility, or third-  
24 party payor or an entity that following such activity will become a  
25 health care provider, health care facility, or third-party payor, and  
26 due diligence related to such activity; and

27 (v) Consistent with applicable legal requirements, creating  
28 deidentified health care information or a limited dataset for the  
29 benefit of the health care provider, health care facility, or third-  
30 party payor.

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

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

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

38 (21) "Information and records related to mental health services"  
39 means a type of health care information that relates to all  
40 information and records compiled, obtained, or maintained in the

1 course of providing services by a mental health service agency or  
2 mental health professional to persons who are receiving or have  
3 received services for mental illness. The term includes mental health  
4 information contained in a medical bill, registration records, as  
5 defined in RCW 71.05.020, and all other records regarding the person  
6 maintained by the department, by regional support networks and their  
7 staff, and by treatment facilities. The term further includes  
8 documents of legal proceedings under chapter 71.05, 71.34, or 10.77  
9 RCW, or somatic health care information. For health care information  
10 maintained by a hospital as defined in RCW 70.41.020 or a health care  
11 facility or health care provider that participates with a hospital in  
12 an organized health care arrangement defined under federal law,  
13 "information and records related to mental health services" is  
14 limited to information and records of services provided by a mental  
15 health professional or information and records of services created by  
16 a hospital-operated (~~community mental~~) behavioral health program as  
17 defined in RCW 71.24.025(~~(+6)~~). The term does not include  
18 psychotherapy notes.

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

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

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

31 (25) "Local public health officer" has the same meaning as in RCW  
32 70.24.017.

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

35 (27) "Mental health professional" means a psychiatrist,  
36 psychologist, psychiatric advanced registered nurse practitioner,  
37 psychiatric nurse, or social worker, and such other mental health  
38 professionals as may be defined by rules adopted by the secretary of  
39 social and health services under chapter 71.05 RCW, whether that  
40 person works in a private or public setting.

1 (28) "Mental health service agency" means a public or private  
2 agency that provides services to persons with mental disorders as  
3 defined under RCW 71.05.020 or 71.34.020 and receives funding from  
4 public sources. This includes evaluation and treatment facilities as  
5 defined in RCW 71.34.020, community mental health service delivery  
6 systems, or community mental health programs, as defined in RCW  
7 71.24.025, and facilities conducting competency evaluations and  
8 restoration under chapter 10.77 RCW.

9 (29) "Minor" has the same meaning as in RCW 71.34.020.

10 (30) "Parent" has the same meaning as in RCW 71.34.020.

11 (31) "Patient" means an individual who receives or has received  
12 health care. The term includes a deceased individual who has received  
13 health care.

14 (32) "Payment" means:

15 (a) The activities undertaken by:

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

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

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

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

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

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

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

37 (v) Utilization review activities, including precertification and  
38 preauthorization of services, and concurrent and retrospective review  
39 of services; and

1 (vi) Disclosure to consumer reporting agencies of any of the  
2 following health care information relating to collection of premiums  
3 or reimbursement:

4 (A) Name and address;

5 (B) Date of birth;

6 (C) Social security number;

7 (D) Payment history;

8 (E) Account number; and

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

11 (33) "Person" means an individual, corporation, business trust,  
12 estate, trust, partnership, association, joint venture, government,  
13 governmental subdivision or agency, or any other legal or commercial  
14 entity.

15 (34) "Professional person" has the same meaning as in RCW  
16 71.05.020.

17 (35) "Psychiatric advanced registered nurse practitioner" has the  
18 same meaning as in RCW 71.05.020.

19 (36) "Psychotherapy notes" means notes recorded, in any medium,  
20 by a mental health professional documenting or analyzing the contents  
21 of conversations during a private counseling session or group, joint,  
22 or family counseling session, and that are separated from the rest of  
23 the individual's medical record. The term excludes mediation  
24 prescription and monitoring, counseling session start and stop times,  
25 the modalities and frequencies of treatment furnished, results of  
26 clinical tests, and any summary of the following items: Diagnosis,  
27 functional status, the treatment plan, symptoms, prognosis, and  
28 progress to date.

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

40 (38) "Release" has the same meaning as in RCW 71.05.020.



1 (39) "Resource management services" has the same meaning as in  
2 RCW 71.05.020.

3 (40) "Serious and urgent threat" means a substantial risk of  
4 impending physical harm that requires immediate action or attention.

5 (41) "Serious violent offense" has the same meaning as in RCW  
6 71.05.020.

7 ((41)) (42) "Sexually transmitted infection" or "sexually  
8 transmitted disease" has the same meaning as "sexually transmitted  
9 disease" in RCW 70.24.017.

10 ((42)) (43) "Test for a sexually transmitted disease" has the  
11 same meaning as in RCW 70.24.017.

12 ((43)) (44) "Third-party payor" means an insurer regulated  
13 under Title 48 RCW authorized to transact business in this state or  
14 other jurisdiction, including a health care service contractor, and  
15 health maintenance organization; or an employee welfare benefit plan,  
16 excluding fitness or wellness plans; or a state or federal health  
17 benefit program.

18 ((44)) (45) "Treatment" means the provision, coordination, or  
19 management of health care and related services by one or more health  
20 care providers or health care facilities, including the coordination  
21 or management of health care by a health care provider or health care  
22 facility with a third party; consultation between health care  
23 providers or health care facilities relating to a patient; or the  
24 referral of a patient for health care from one health care provider  
25 or health care facility to another.

26 **Sec. 3.** RCW 70.02.010 and 2016 sp.s. c 29 s 416 are each amended  
27 to read as follows:

28 The definitions in this section apply throughout this chapter  
29 unless the context clearly requires otherwise.

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

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

34 (a) Statutory, regulatory, fiscal, medical, or scientific  
35 standards;

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

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

39 (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  
3 identify an individual and with respect to which there is no  
4 reasonable basis to believe that the information can be used to  
5 identify an individual.

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

8 (7) "Designated crisis responder" has the same meaning as in RCW  
9 71.05.020 or 71.34.020, as applicable.

10 (8) "Detention" or "detain" has the same meaning as in RCW  
11 71.05.020.

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

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

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

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

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

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

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

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

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

39 (16) "Health care information" means any information, whether  
40 oral or recorded in any form or medium, that identifies or can

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

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

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

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

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

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

36 (e) Business planning and development, such as conducting cost-  
37 management and planning-related analyses related to managing and  
38 operating the health care facility or third-party payor, including  
39 formulary development and administration, development, or improvement  
40 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  
7 for policy holders, plan sponsors, or other customers, provided that  
8 health care information is not disclosed to such policy holder, plan  
9 sponsor, or customer;

10 (iii) Resolution of internal grievances;

11 (iv) The sale, transfer, merger, or consolidation of all or part  
12 of a health care provider, health care facility, or third-party payor  
13 with another health care provider, health care facility, or third-  
14 party payor or an entity that following such activity will become a  
15 health care provider, health care facility, or third-party payor, and  
16 due 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  
23 state to provide health care in the ordinary course of business or  
24 practice 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  
30 information and records compiled, obtained, or maintained in the  
31 course of providing services by a mental health service agency or  
32 mental health professional to persons who are receiving or have  
33 received services for mental illness. The term includes mental health  
34 information contained in a medical bill, registration records, as  
35 defined in RCW 71.05.020, and all other records regarding the person  
36 maintained by the department, by regional support networks and their  
37 staff, and by treatment facilities. The term further includes  
38 documents of legal proceedings under chapter 71.05, 71.34, or 10.77  
39 RCW, or somatic health care information. For health care information  
40 maintained by a hospital as defined in RCW 70.41.020 or a health care

1 facility or health care provider that participates with a hospital in  
2 an organized health care arrangement defined under federal law,  
3 "information and records related to mental health services" is  
4 limited to information and records of services provided by a mental  
5 health professional or information and records of services created by  
6 a hospital-operated behavioral health program as defined in RCW  
7 71.24.025. The term does not include psychotherapy notes.

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

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

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

20 (25) "Local public health officer" has the same meaning as in RCW  
21 70.24.017.

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

24 (27) "Mental health professional" means a psychiatrist,  
25 psychologist, psychiatric advanced registered nurse practitioner,  
26 psychiatric nurse, or social worker, and such other mental health  
27 professionals as may be defined by rules adopted by the secretary of  
28 social and health services under chapter 71.05 RCW, whether that  
29 person works in a private or public setting.

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

38 (29) "Minor" has the same meaning as in RCW 71.34.020.

39 (30) "Parent" has the same meaning as in RCW 71.34.020.

1 (31) "Patient" means an individual who receives or has received  
2 health care. The term includes a deceased individual who has received  
3 health care.

4 (32) "Payment" means:

5 (a) The activities undertaken by:

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

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

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

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

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

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

24 (iv) Review of health care services with respect to medical  
25 necessity, coverage under a health plan, appropriateness of care, or  
26 justification of charges;

27 (v) Utilization review activities, including precertification and  
28 preauthorization of services, and concurrent and retrospective review  
29 of services; and

30 (vi) Disclosure to consumer reporting agencies of any of the  
31 following health care information relating to collection of premiums  
32 or reimbursement:

33 (A) Name and address;

34 (B) Date of birth;

35 (C) Social security number;

36 (D) Payment history;

37 (E) Account number; and

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

1 (33) "Person" means an individual, corporation, business trust,  
2 estate, trust, partnership, association, joint venture, government,  
3 governmental subdivision or agency, or any other legal or commercial  
4 entity.

5 (34) "Professional person" has the same meaning as in RCW  
6 71.05.020.

7 (35) "Psychiatric advanced registered nurse practitioner" has the  
8 same meaning as in RCW 71.05.020.

9 (36) "Psychotherapy notes" means notes recorded, in any medium,  
10 by a mental health professional documenting or analyzing the contents  
11 of conversations during a private counseling session or group, joint,  
12 or family counseling session, and that are separated from the rest of  
13 the individual's medical record. The term excludes mediation  
14 prescription and monitoring, counseling session start and stop times,  
15 the modalities and frequencies of treatment furnished, results of  
16 clinical tests, and any summary of the following items: Diagnosis,  
17 functional status, the treatment plan, symptoms, prognosis, and  
18 progress to date.

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

30 (38) "Release" has the same meaning as in RCW 71.05.020.

31 (39) "Resource management services" has the same meaning as in  
32 RCW 71.05.020.

33 (40) "Serious and urgent threat" means a substantial risk of  
34 impending physical harm that requires immediate action or attention.

35 (41) "Serious violent offense" has the same meaning as in RCW  
36 71.05.020.

37 ~~((41))~~ (42) "Sexually transmitted infection" or "sexually  
38 transmitted disease" has the same meaning as "sexually transmitted  
39 disease" in RCW 70.24.017.

1       (~~(42)~~) (43) "Test for a sexually transmitted disease" has the  
2 same meaning as in RCW 70.24.017.

3       (~~(43)~~) (44) "Third-party payor" means an insurer regulated  
4 under Title 48 RCW authorized to transact business in this state or  
5 other jurisdiction, including a health care service contractor, and  
6 health maintenance organization; or an employee welfare benefit plan,  
7 excluding fitness or wellness plans; or a state or federal health  
8 benefit program.

9       (~~(44)~~) (45) "Treatment" means the provision, coordination, or  
10 management of health care and related services by one or more health  
11 care providers or health care facilities, including the coordination  
12 or management of health care by a health care provider or health care  
13 facility with a third party; consultation between health care  
14 providers or health care facilities relating to a patient; or the  
15 referral of a patient for health care from one health care provider  
16 or health care facility to another.

17       **Sec. 4.** RCW 70.02.050 and 2014 c 220 s 6 are each amended to  
18 read as follows:

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

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

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

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

37       (ii) Will take appropriate steps to protect the health care  
38 information;



1 (c) To any person if the health care provider or health care  
2 facility reasonably believes that disclosure will avoid or minimize  
3 (~~(an imminent danger)~~) a serious and urgent threat to the health or  
4 safety of (~~(the patient or any other individual, however)~~) any person  
5 or the public, and the information is disclosed only to a person who  
6 is reasonably able to prevent or lessen the threat, including the  
7 target of the threat. There is no obligation under this chapter on  
8 the part of the provider or facility to so disclose(~~(. The fact of~~  
9 ~~admission to a provider for mental health services and all~~  
10 ~~information and records compiled, obtained, or maintained in the~~  
11 ~~course of providing mental health services to either voluntary or~~  
12 ~~involuntary recipients of services at public or private agencies is~~  
13 ~~not subject to disclosure unless disclosure is permitted in RCW~~  
14 ~~70.02.230; or)~~);

15 (d) To any person if the conditions in section 1 of this act are  
16 met; or

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

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

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

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

35 **Sec. 5.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are  
36 each reenacted and amended to read as follows:

37 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,  
38 (~~(70.96A.150,)~~) 74.09.295, 70.02.210, 70.02.240, 70.02.250, and  
39 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,

1 the fact of admission to a provider for mental health services and  
2 all information and records compiled, obtained, or maintained in the  
3 course of providing mental health services to either voluntary or  
4 involuntary recipients of services at public or private agencies must  
5 be confidential.

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

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

13 (i) Employed by the facility;

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

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

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

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

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

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

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

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

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

34 (B) A statement evaluating the mental and physical condition of  
35 the patient, and a statement of the probable duration of the  
36 patient's confinement, if such information is requested by the next  
37 of kin, attorney, personal representative, guardian, or conservator;  
38 and

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

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

9 (ii) To a court or its designee in which a motion under chapter  
10 10.77 RCW has been made for involuntary medication of a defendant for  
11 the purpose of competency restoration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (q) Within the mental health service agency where the patient is  
37 receiving treatment, confidential information may be disclosed to  
38 persons employed, serving in bona fide training programs, or  
39 participating in supervised volunteer programs, at the facility when  
40 it is necessary to perform their duties;

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

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

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

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

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

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

37 (x) To staff members of the protection and advocacy agency or to  
38 staff members of a private, nonprofit corporation for the purpose of  
39 protecting and advocating the rights of persons with mental disorders  
40 or developmental disabilities. Resource management services may limit

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

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

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

33 "As a condition of conducting evaluation or research concerning  
34 persons who have received services from (fill in the facility,  
35 agency, or person) I, . . . . ., agree not to divulge, publish, or  
36 otherwise make known to unauthorized persons or the public any  
37 information obtained in the course of such evaluation or research  
38 regarding persons who have received services such that the person who  
39 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 (ii) Nothing in this chapter may be construed to prohibit the  
5 compilation and publication of statistical data for use by government  
6 or researchers under standards, including standards to assure  
7 maintenance of confidentiality, set forth by the secretary;

8 (aa) To any person if the conditions in section 1 of this act are  
9 met.

10 (3) Whenever federal law or federal regulations restrict the  
11 release of information contained in the information and records  
12 related to mental health services of any patient who receives  
13 treatment for chemical dependency, the department may restrict the  
14 release of the information as necessary to comply with federal law  
15 and regulations.

16 (4) Civil liability and immunity for the release of information  
17 about a particular person who is committed to the department of  
18 social and health services under RCW 71.05.280(3) and  
19 71.05.320(~~(3)~~) (4)(c) after dismissal of a sex offense as defined  
20 in RCW 9.94A.030, is governed by RCW 4.24.550.

21 (5) The fact of admission to a provider of mental health  
22 services, as well as all records, files, evidence, findings, or  
23 orders made, prepared, collected, or maintained pursuant to chapter  
24 71.05 RCW are not admissible as evidence in any legal proceeding  
25 outside that chapter without the written authorization of the person  
26 who was the subject of the proceeding except as provided in RCW  
27 70.02.260, in a subsequent criminal prosecution of a person committed  
28 pursuant to RCW 71.05.280(3) or 71.05.320(~~(3)~~) (4)(c) on charges  
29 that were dismissed pursuant to chapter 10.77 RCW due to incompetency  
30 to stand trial, in a civil commitment proceeding pursuant to chapter  
31 71.09 RCW, or, in the case of a minor, a guardianship or dependency  
32 proceeding. The records and files maintained in any court proceeding  
33 pursuant to chapter 71.05 RCW must be confidential and available  
34 subsequent to such proceedings only to the person who was the subject  
35 of the proceeding or his or her attorney. In addition, the court may  
36 order the subsequent release or use of such records or files only  
37 upon good cause shown if the court finds that appropriate safeguards  
38 for strict confidentiality are and will be maintained.



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

6 (i) One thousand dollars; or

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

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

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

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

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

20 **Sec. 6.** RCW 70.02.230 and 2016 sp.s. c 29 s 417 are each amended  
21 to read as follows:

22 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,  
23 74.09.295, 70.02.210, 70.02.240, 70.02.250, and 70.02.260, or  
24 pursuant to a valid authorization under RCW 70.02.030, the fact of  
25 admission to a provider for mental health services and all  
26 information and records compiled, obtained, or maintained in the  
27 course of providing mental health services to either voluntary or  
28 involuntary recipients of services at public or private agencies must  
29 be confidential.

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

33 (a) In communications between qualified professional persons to  
34 meet the requirements of chapter 71.05 RCW, in the provision of  
35 services or appropriate referrals, or in the course of guardianship  
36 proceedings if provided to a professional person:

37 (i) Employed by the facility;

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

39 (iii) Who is a designated crisis responder;

1 (iv) Who is providing services under chapter 71.24 RCW;  
2 (v) Who is employed by a state or local correctional facility  
3 where the person is confined or supervised; or  
4 (vi) Who is providing evaluation, treatment, or follow-up  
5 services under chapter 10.77 RCW;

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

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

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

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

19 (B) A statement evaluating the mental and physical condition of  
20 the patient, and a statement of the probable duration of the  
21 patient's confinement, if such information is requested by the next  
22 of kin, attorney, personal representative, guardian, or conservator;  
23 and

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

27 (d)(i) To the courts as necessary to the administration of  
28 chapter 71.05 RCW or to a court ordering an evaluation or treatment  
29 under chapter 10.77 RCW solely for the purpose of preventing the  
30 entry of any evaluation or treatment order that is inconsistent with  
31 any order entered under chapter 71.05 RCW.

32 (ii) To a court or its designee in which a motion under chapter  
33 10.77 RCW has been made for involuntary medication of a defendant for  
34 the purpose of competency restoration.

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

38 (e)(i) When a mental health professional or designated crisis  
39 responder is requested by a representative of a law enforcement or  
40 corrections agency, including a police officer, sheriff, community

1 corrections officer, a municipal attorney, or prosecuting attorney to  
2 undertake an investigation or provide treatment under RCW 71.05.150,  
3 10.31.110, or 71.05.153, the mental health professional or designated  
4 crisis responder shall, if requested to do so, advise the  
5 representative in writing of the results of the investigation  
6 including a statement of reasons for the decision to detain or  
7 release the person investigated. The written report must be submitted  
8 within seventy-two hours of the completion of the investigation or  
9 the request from the law enforcement or corrections representative,  
10 whichever occurs later.

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

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

15 (g) To the prosecuting attorney as necessary to carry out the  
16 responsibilities of the office under RCW 71.05.330(2),  
17 71.05.340(1)(b), and 71.05.335. The prosecutor must be provided  
18 access to records regarding the committed person's treatment and  
19 prognosis, medication, behavior problems, and other records relevant  
20 to the issue of whether treatment less restrictive than inpatient  
21 treatment is in the best interest of the committed person or others.  
22 Information must be disclosed only after giving notice to the  
23 committed person and the person's counsel;

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

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

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

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

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

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

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

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

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

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

37 (iii) Disclosure under this subsection is mandatory for the  
38 purposes of the federal health insurance portability and  
39 accountability act;

1 (n) When a patient would otherwise be subject to the provisions  
2 of this section and disclosure is necessary for the protection of the  
3 patient or others due to his or her unauthorized disappearance from  
4 the facility, and his or her whereabouts is unknown, notice of the  
5 disappearance, along with relevant information, may be made to  
6 relatives, the department of corrections when the person is under the  
7 supervision of the department, and governmental law enforcement  
8 agencies designated by the physician or psychiatric advanced  
9 registered nurse practitioner in charge of the patient or the  
10 professional person in charge of the facility, or his or her  
11 professional designee;

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

13 (p) To qualified staff members of the department, to the director  
14 of behavioral health organizations, to resource management services  
15 responsible for serving a patient, or to service providers designated  
16 by resource management services as necessary to determine the  
17 progress and adequacy of treatment and to determine whether the  
18 person should be transferred to a less restrictive or more  
19 appropriate treatment modality or facility;

20 (q) Within the mental health service agency where the patient is  
21 receiving treatment, confidential information may be disclosed to  
22 persons employed, serving in bona fide training programs, or  
23 participating in supervised volunteer programs, at the facility when  
24 it is necessary to perform their duties;

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

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

34 (t) Consistent with the requirements of the federal health  
35 information portability and accountability act, to a licensed mental  
36 health professional or a health care professional licensed under  
37 chapter 18.71, 18.71A, 18.57, 18.57A, 18.79, or 18.36A RCW who is  
38 providing care to a person, or to whom a person has been referred for  
39 evaluation or treatment, to assure coordinated care and treatment of  
40 that person. Psychotherapy notes may not be released without

1 authorization of the person who is the subject of the request for  
2 release of information;

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

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

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

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

39 (y) To all current treating providers of the patient with  
40 prescriptive authority who have written a prescription for the

1 patient within the last twelve months. For purposes of coordinating  
2 health care, the department may release without written authorization  
3 of the patient, information acquired for billing and collection  
4 purposes as described in RCW 70.02.050(1)(d). The department shall  
5 notify the patient that billing and collection information has been  
6 released to named providers, and provide the substance of the  
7 information released and the dates of such release. The department  
8 may not release counseling, inpatient psychiatric hospitalization, or  
9 drug and alcohol treatment information without a signed written  
10 release from the client;

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

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

24 I recognize that unauthorized release of confidential information  
25 may subject me to civil liability under the provisions of state law.  
26 /s/ . . . . ."

27 (ii) Nothing in this chapter may be construed to prohibit the  
28 compilation and publication of statistical data for use by government  
29 or researchers under standards, including standards to assure  
30 maintenance of confidentiality, set forth by the secretary;

31 (aa) To any person if the conditions in section 1 of this act are  
32 met.

33 (3) Whenever federal law or federal regulations restrict the  
34 release of information contained in the information and records  
35 related to mental health services of any patient who receives  
36 treatment for chemical dependency, the department may restrict the  
37 release of the information as necessary to comply with federal law  
38 and regulations.

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

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

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

29 (i) One thousand dollars; or

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

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

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

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



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

3 NEW SECTION. **Sec. 7.** Sections 3 and 6 of this act take effect  
4 April 1, 2018.

5 NEW SECTION. **Sec. 8.** Sections 2 and 5 of this act expire April  
6 1, 2018.

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