

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 616

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO CHILDREN'S MENTAL HEALTH SERVICES; AMENDING SECTION 16-2428,
2 IDAHO CODE, TO REVISE PROVISIONS REGARDING THE DISCLOSURE OF CERTAIN
3 INFORMATION; AMENDING SECTION 74-113, IDAHO CODE, TO AUTHORIZE ACCESS
4 TO MENTAL HEALTH RECORDS OF A CHILD IN CERTAIN INSTANCES AND TO MAKE
5 TECHNICAL CORRECTIONS; AND DECLARING AN EMERGENCY.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Section 16-2428, Idaho Code, be, and the same is hereby
9 amended to read as follows:

10 16-2428. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION. (1) All
11 certificates, applications, records, and reports directly or indirectly
12 identifying a patient or former patient or an individual whose involuntary
13 treatment has been sought under this chapter shall be kept confidential and
14 shall not be disclosed by any person except with the consent of the person
15 identified or his legal guardian, if any, or as disclosure may be necessary
16 to carry out any of the provisions of this chapter, or as a court may direct
17 upon its determination that disclosure is necessary and that failure to make
18 such disclosure would be contrary to public interest.

19 ~~(1)~~ (2) No person in possession of confidential statements made by a
20 child over the age of fourteen (14) years in the course of treatment may dis-
21 close such information to the child's parent or others without the written
22 permission of the child, unless such disclosure is ~~necessary to obtain in-~~
23 ~~insurance coverage, to carry out the treatment plan or to prevent harm to the~~
24 ~~child or others, or unless authorized to disclose such information by order~~
25 ~~of a court.:~~

26 (a) Necessary:

27 (i) For a parent or guardian to obtain medicaid or insurance cov-
28 erage;

29 (ii) For a parent or guardian to contest or appeal denial of medic-
30 aid or insurance coverage;

31 (iii) To carry out the treatment plan, including accessing ser-
32 vices and supports; or

33 (iv) To prevent harm to the child or others; or

34 (b) Authorized by order of the court.

35 ~~(2)~~ (3) The child has the right of access to information regarding
36 his treatment and has the right to have copies of information and to submit
37 clarifying or correcting statements and other documentation of reasonable
38 length for inclusion with his treatment record.

39 ~~(3)~~ (4) Nothing in this section shall prohibit the denial of access to
40 records by a child when a physician or other mental health professional be-
41 lieves and notes in the child's medical records that the disclosure would be

1 damaging to the child. In any case, the child has the right to petition the
2 court for an order granting access.

3 ~~(4)~~ (5) Access to records by the state protection and advocacy system
4 shall be governed by 42 U.S.C. 10801 et seq., as amended.

5 SECTION 2. That Section 74-113, Idaho Code, be, and the same is hereby
6 amended to read as follows:

7 74-113. ACCESS TO RECORDS ABOUT A PERSON BY A PERSON ~~-- MENTAL HEALTH~~
8 RECORDS OF A CHILD. (1) A person may inspect and copy the records of a public
9 agency pertaining to that person, even if the record is otherwise exempt from
10 public disclosure.

11 (2) A person may request in writing an amendment of any record pertain-
12 ing to that person. Within ten (10) days of the receipt of the request, the
13 public agency shall either:

14 (a) Make any correction of any portion of the record ~~which~~ that the per-
15 son establishes is not accurate, relevant, or complete; or

16 (b) Inform the person in writing of the refusal to amend in accordance
17 with the request and the reasons for the refusal, and indicate clearly
18 the person's right to appeal the refusal and the time period for doing
19 so. The procedures for appealing a refusal to amend shall be the same
20 as those set forth in sections 74-115 and 74-116, Idaho Code, and the
21 court may award reasonable costs and attorney's fees to the prevailing
22 party or parties, if it finds that the request for amendment or refusal
23 to amend was frivolously pursued.

24 (3) The right to inspect and amend records pertaining to oneself does
25 not include the right to review:

26 (a) Otherwise exempt investigatory records of a public agency if the
27 investigation is ongoing;

28 (b) Information that is compiled in reasonable anticipation of a civil
29 action or proceeding ~~which~~ that is not otherwise discoverable;

30 ~~The information~~ Information that relates to adoption records;

31 (d) Information ~~which~~ that is otherwise exempt from disclosure by
32 statute or court rule; or

33 (e) Records of a prisoner maintained by the state or local agency having
34 custody of the prisoner or formerly having custody of the prisoner or by
35 the commission of pardons and parole.

36 (4) Parents or guardians may receive mental health records of their
37 children in accordance with the provisions of section 16-2428, Idaho Code.

38 SECTION 3. An emergency existing therefor, which emergency is hereby
39 declared to exist, this act shall be in full force and effect on and after its
40 passage and approval.