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SENATE BILL 5435

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State of Washington

65th Legislature

2017 Regular Session

By Senators Rivers and Cleveland

1 AN ACT Relating to specifying to whom information and records  
2 related to mental health services may be disclosed for the purposes  
3 of care coordination and treatment; amending RCW 70.02.230;  
4 reenacting and amending RCW 70.02.230; providing an effective date;  
5 and providing an expiration date.

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

7 **Sec. 1.** RCW 70.02.230 and 2014 c 225 s 71 and 2014 c 220 s 9 are  
8 each reenacted and amended to read as follows:

9 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,  
10 (~~70.96A.150,~~) 74.09.295, 70.02.210, 70.02.240, 70.02.250, and  
11 70.02.260, or pursuant to a valid authorization under RCW 70.02.030,  
12 the fact of admission to a provider for mental health services and  
13 all information and records compiled, obtained, or maintained in the  
14 course of providing mental health services to either voluntary or  
15 involuntary recipients of services at public or private agencies must  
16 be confidential.

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

20 (a) In communications between qualified professional persons to  
21 meet the requirements of chapter 71.05 RCW, in the provision of

1 services or appropriate referrals, or in the course of guardianship  
2 proceedings if provided to a professional person:

3 (i) Employed by the facility;

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

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

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

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

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

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

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

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

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

24 (B) A statement evaluating the mental and physical condition of  
25 the patient, and a statement of the probable duration of the  
26 patient's confinement, if such information is requested by the next  
27 of kin, attorney, personal representative, guardian, or conservator;  
28 and

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

32 (d)(i) To the courts as necessary to the administration of  
33 chapter 71.05 RCW or to a court ordering an evaluation or treatment  
34 under chapter 10.77 RCW solely for the purpose of preventing the  
35 entry of any evaluation or treatment order that is inconsistent with  
36 any order entered under chapter 71.05 RCW.

37 (ii) To a court or its designee in which a motion under chapter  
38 10.77 RCW has been made for involuntary medication of a defendant for  
39 the purpose of competency restoration.

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

4 (e)(i) When a mental health professional is requested by a  
5 representative of a law enforcement or corrections agency, including  
6 a police officer, sheriff, community corrections officer, a municipal  
7 attorney, or prosecuting attorney to undertake an investigation or  
8 provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the  
9 mental health professional shall, if requested to do so, advise the  
10 representative in writing of the results of the investigation  
11 including a statement of reasons for the decision to detain or  
12 release the person investigated. The written report must be submitted  
13 within seventy-two hours of the completion of the investigation or  
14 the request from the law enforcement or corrections representative,  
15 whichever occurs later.

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

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

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

29 (h)(i) To appropriate law enforcement agencies and to a person,  
30 when the identity of the person is known to the public or private  
31 agency, whose health and safety has been threatened, or who is known  
32 to have been repeatedly harassed, by the patient. The person may  
33 designate a representative to receive the disclosure. The disclosure  
34 must be made by the professional person in charge of the public or  
35 private agency or his or her designee and must include the dates of  
36 commitment, admission, discharge, or release, authorized or  
37 unauthorized absence from the agency's facility, and only any other  
38 information that is pertinent to the threat or harassment. The agency  
39 or its employees are not civilly liable for the decision to disclose

1 or not, so long as the decision was reached in good faith and without  
2 gross negligence.

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

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

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

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

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

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

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

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

37 (ii) The law enforcement and prosecuting attorneys may only  
38 release the information obtained to the person's attorney as required  
39 by court rule and to a jury or judge, if a jury is waived, that

1 presides over any trial at which the person is charged with violating  
2 RCW 9.41.040(2)(a)((~~ii~~)) (iii);

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

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

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

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

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

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

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

39 (t)(i) Consistent with the requirements of the federal health  
40 (~~information~~) insurance portability and accountability act, to:

1       (A) ~~A ((licensed mental health professional or a health care~~  
2 ~~professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,~~  
3 ~~18.79, or 18.36A RCW))~~ health care provider who is providing care to  
4 a ~~((person))~~ patient, or to whom a ~~((person))~~ patient has been  
5 referred for evaluation or treatment~~((τ))~~; or

6       (B) Any other person who requires information and records related  
7 to mental health services to assure coordinated care and treatment of  
8 that ~~((person))~~ patient.

9       (ii) A person authorized to use or disclose information and  
10 records related to mental health services under this subsection  
11 (2)(t) must take appropriate steps to protect the information and  
12 records relating to mental health services.

13       (iii) Psychotherapy notes may not be released without  
14 authorization of the ~~((person))~~ patient who is the subject of the  
15 request for release of information;

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

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

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

34       (x) To staff members of the protection and advocacy agency or to  
35 staff members of a private, nonprofit corporation for the purpose of  
36 protecting and advocating the rights of persons with mental disorders  
37 or developmental disabilities. Resource management services may limit  
38 the release of information to the name, birthdate, and county of  
39 residence of the patient, information regarding whether the patient  
40 was voluntarily admitted, or involuntarily committed, the date and

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

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

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

30 "As a condition of conducting evaluation or research concerning  
31 persons who have received services from (fill in the facility,  
32 agency, or person) I, . . . . ., agree not to divulge, publish, or  
33 otherwise make known to unauthorized persons or the public any  
34 information obtained in the course of such evaluation or research  
35 regarding persons who have received services such that the person who  
36 received such services is identifiable.

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

39 /s/ . . . . ."

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

5 (3) Whenever federal law or federal regulations restrict the  
6 release of information contained in the information and records  
7 related to mental health services of any patient who receives  
8 treatment for chemical dependency, the department may restrict the  
9 release of the information as necessary to comply with federal law  
10 and regulations.

11 (4) Civil liability and immunity for the release of information  
12 about a particular person who is committed to the department of  
13 social and health services under RCW 71.05.280(3) and  
14 71.05.320(~~((3))~~) (4)(c) after dismissal of a sex offense as defined  
15 in RCW 9.94A.030, is governed by RCW 4.24.550.

16 (5) The fact of admission to a provider of mental health  
17 services, as well as all records, files, evidence, findings, or  
18 orders made, prepared, collected, or maintained pursuant to chapter  
19 71.05 RCW are not admissible as evidence in any legal proceeding  
20 outside that chapter without the written authorization of the person  
21 who was the subject of the proceeding except as provided in RCW  
22 70.02.260, in a subsequent criminal prosecution of a person committed  
23 pursuant to RCW 71.05.280(3) or 71.05.320(~~((3))~~) (4)(c) on charges  
24 that were dismissed pursuant to chapter 10.77 RCW due to incompetency  
25 to stand trial, in a civil commitment proceeding pursuant to chapter  
26 71.09 RCW, or, in the case of a minor, a guardianship or dependency  
27 proceeding. The records and files maintained in any court proceeding  
28 pursuant to chapter 71.05 RCW must be confidential and available  
29 subsequent to such proceedings only to the person who was the subject  
30 of the proceeding or his or her attorney. In addition, the court may  
31 order the subsequent release or use of such records or files only  
32 upon good cause shown if the court finds that appropriate safeguards  
33 for strict confidentiality are and will be maintained.

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

39 (i) One thousand dollars; or



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

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

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

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

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

14 **Sec. 2.** RCW 70.02.230 and 2016 sp.s. c 29 s 417 are each amended  
15 to read as follows:

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

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

27 (a) In communications between qualified professional persons to  
28 meet the requirements of chapter 71.05 RCW, in the provision of  
29 services or appropriate referrals, or in the course of guardianship  
30 proceedings if provided to a professional person:

31 (i) Employed by the facility;

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

33 (iii) Who is a designated crisis responder;

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

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

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

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

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

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

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

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

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

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

27 (ii) To a court or its designee in which a motion under chapter  
28 10.77 RCW has been made for involuntary medication of a defendant for  
29 the purpose of competency restoration.

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

33 (e)(i) When a mental health professional or designated crisis  
34 responder is requested by a representative of a law enforcement or  
35 corrections agency, including a police officer, sheriff, community  
36 corrections officer, a municipal attorney, or prosecuting attorney to  
37 undertake an investigation or provide treatment under RCW 71.05.150,  
38 10.31.110, or 71.05.153, the mental health professional or designated  
39 crisis responder shall, if requested to do so, advise the  
40 representative in writing of the results of the investigation

1 including a statement of reasons for the decision to detain or  
2 release the person investigated. The written report must be submitted  
3 within seventy-two hours of the completion of the investigation or  
4 the request from the law enforcement or corrections representative,  
5 whichever occurs later.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (t)(i) Consistent with the requirements of the federal health  
28 (~~information~~) insurance portability and accountability act, to:

29 (A) A (~~licensed mental health professional or a health care~~  
30 professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,  
31 18.79, or 18.36A RCW) health care provider who is providing care to  
32 a (~~person~~) patient, or to whom a (~~person~~) patient has been  
33 referred for evaluation or treatment(~~(7)~~); or

34 (B) Any other person who requires information and records related  
35 to mental health services to assure coordinated care and treatment of  
36 that (~~person~~) patient.

37 (ii) A person authorized to use or disclose information and  
38 records related to mental health services under this subsection  
39 (2)(t) must take appropriate steps to protect the information and  
40 records relating to mental health services.

1        (iii) Psychotherapy notes may not be released without  
2 authorization of the (~~person~~) patient who is the subject of the  
3 request for release of information;

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

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

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

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

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

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

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

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

28 /s/ . . . . ."

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

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. 3.** Section 1 of this act expires April 1,  
4 2018.

5 NEW SECTION. **Sec. 4.** Section 2 of this act takes effect April  
6 1, 2018.

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