
HOUSE BILL 2316

State of Washington 62nd Legislature 2012 Regular Session

By Representatives Cody, Hinkle, and Green

Read first time 01/11/12. Referred to Committee on Health Care & Wellness.

1 AN ACT Relating to disclosure of health care information; amending
2 RCW 70.02.010, 70.02.020, 70.02.050, 71.05.660, 71.05.680, 71.05.690,
3 and 71.24.035; adding new sections to chapter 70.02 RCW; repealing RCW
4 70.24.105, 71.05.390, 71.05.640, 71.05.385, 71.05.420, 71.05.440,
5 71.05.427, 71.05.510, 71.34.340, 71.34.345, and 71.34.350; prescribing
6 penalties; and providing an effective date.

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

8 **Sec. 1.** RCW 70.02.010 and 2006 c 235 s 2 are each amended to read
9 as follows:

10 The definitions in this section apply throughout this chapter
11 unless the context clearly requires otherwise.

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

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

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

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

1 (2) "Directory information" means information disclosing the
2 presence, and for the purpose of identification, the name, location
3 within a health care facility, and the general health condition of a
4 particular patient who is a patient in a health care facility or who is
5 currently receiving emergency health care in a health care facility.

6 (3) "Federal, state, or local law enforcement authorities" means an
7 officer of any agency or authority in the United States, a state, a
8 tribe, a territory, or a political subdivision of a state, a tribe, or
9 a territory who is empowered by law to: (a) Investigate or conduct an
10 official inquiry into a potential criminal violation of law; or (b)
11 prosecute or otherwise conduct a criminal proceeding arising from an
12 alleged violation of law.

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

16 (5) "Health care" means any care, service, or procedure provided by
17 a health care provider:

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

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

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

24 (7) "Health care information" means any information, whether oral
25 or recorded in any form or medium, that identifies or can readily be
26 associated with the identity of a patient and directly relates to the
27 patient's health care, including a patient's deoxyribonucleic acid and
28 identified sequence of chemical base pairs. The term includes any
29 required accounting of disclosures of health care information.

30 (8) "Health care operations" means any of the following activities
31 of a health care provider, health care facility, or third-party payor
32 to the extent that the activities are related to functions that make an
33 entity a health care provider, a health care facility, or a third-party
34 payor:

35 (a) Conducting: Quality assessment and improvement activities,
36 including outcomes evaluation and development of clinical guidelines,
37 if the obtaining of generalizable knowledge is not the primary purpose
38 of any studies resulting from such activities; population-based

1 activities relating to improving health or reducing health care costs,
2 protocol development, case management and care coordination, contacting
3 of health care providers and patients with information about treatment
4 alternatives; and related functions that do not include treatment;

5 (b) Reviewing the competence or qualifications of health care
6 professionals, evaluating practitioner and provider performance and
7 third-party payor performance, conducting training programs in which
8 students, trainees, or practitioners in areas of health care learn
9 under supervision to practice or improve their skills as health care
10 providers, training of nonhealth care professionals, accreditation,
11 certification, licensing, or credentialing activities;

12 (c) Underwriting, premium rating, and other activities relating to
13 the creation, renewal, or replacement of a contract of health insurance
14 or health benefits, and ceding, securing, or placing a contract for
15 reinsurance of risk relating to claims for health care, including stop-
16 loss insurance and excess of loss insurance, if any applicable legal
17 requirements are met;

18 (d) Conducting or arranging for medical review, legal services, and
19 auditing functions, including fraud and abuse detection and compliance
20 programs;

21 (e) Business planning and development, such as conducting cost-
22 management and planning-related analyses related to managing and
23 operating the health care facility or third-party payor, including
24 formulary development and administration, development, or improvement
25 of methods of payment or coverage policies; and

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

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

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

35 (iii) Resolution of internal grievances;

36 (iv) The sale, transfer, merger, or consolidation of all or part of
37 a health care provider, health care facility, or third-party payor with
38 another health care provider, health care facility, or third-party

1 payor or an entity that following such activity will become a health
2 care provider, health care facility, or third-party payor, and due
3 diligence related to such activity; and

4 (v) Consistent with applicable legal requirements, creating
5 deidentified health care information or a limited dataset and fund-
6 raising for the benefit of the health care provider, health care
7 facility, or third-party payor.

8 (9) "Health care provider" means a person who is licensed,
9 certified, registered, or otherwise authorized by the law of this state
10 to provide health care in the ordinary course of business or practice
11 of a profession.

12 (10) "Information and records related to mental health services"
13 means a type of health care information that relates to all information
14 and records, including mental health treatment records, compiled,
15 obtained, or maintained in the course of providing services by a mental
16 health service provider, as defined in RCW 71.05.020. This may include
17 documents of legal proceedings under chapter 71.05, 71.34, or 10.77
18 RCW, or somatic health care information.

19 (11) "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 sexually
22 transmitted disease test is performed, the results of such tests when
23 they are positive, and any information relating to diagnosis of or
24 treatment for any confirmed sexually transmitted diseases.

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

30 ~~((+11))~~ (13) "Maintain," as related to health care information,
31 means to hold, possess, preserve, retain, store, or control that
32 information.

33 ~~((+12))~~ (14) "Mental health treatment records" include
34 registration records, as defined in RCW 71.05.020, and all other
35 records concerning persons who are receiving or who at any time have
36 received services for mental illness, which are maintained by the
37 department, by regional support networks and their staff, and by
38 treatment facilities. "Mental health treatment records" include mental

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

8 (15) "Patient" means an individual who receives or has received
9 health care. The term includes a deceased individual who has received
10 health care.

11 (~~(13)~~) (16) "Payment" means:

12 (a) The activities undertaken by:

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

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

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

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

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

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

30 (iv) Review of health care services with respect to medical
31 necessity, coverage under a health plan, appropriateness of care, or
32 justification of charges;

33 (v) Utilization review activities, including precertification and
34 preauthorization of services, and concurrent and retrospective review
35 of services; and

36 (vi) Disclosure to consumer reporting agencies of any of the
37 following health care information relating to collection of premiums or
38 reimbursement:

- 1 (A) Name and address;
- 2 (B) Date of birth;
- 3 (C) Social security number;
- 4 (D) Payment history;
- 5 (E) Account number; and
- 6 (F) Name and address of the health care provider, health care
- 7 facility, and/or third-party payor.

8 ~~((+14+))~~ (17) "Person" means an individual, corporation, business
9 trust, estate, trust, partnership, association, joint venture,
10 government, governmental subdivision or agency, or any other legal or
11 commercial entity.

12 ~~((+15+))~~ (18) "Reasonable fee" means the charges for duplicating or
13 searching the record, but shall not exceed sixty-five cents per page
14 for the first thirty pages and fifty cents per page for all other
15 pages. In addition, a clerical fee for searching and handling may be
16 charged not to exceed fifteen dollars. These amounts shall be adjusted
17 biennially in accordance with changes in the consumer price index, all
18 consumers, for Seattle-Tacoma metropolitan statistical area as
19 determined by the secretary of health. However, where editing of
20 records by a health care provider is required by statute and is done by
21 the provider personally, the fee may be the usual and customary charge
22 for a basic office visit.

23 ~~((+16+))~~ (19) "Sexually transmitted disease" has the same meaning
24 as in RCW 70.24.017.

25 (20) "Third-party payor" means an insurer regulated under Title 48
26 RCW authorized to transact business in this state or other
27 jurisdiction, including a health care service contractor, and health
28 maintenance organization; or an employee welfare benefit plan; or a
29 state or federal health benefit program.

30 ~~((+17+))~~ (21) "Treatment" means the provision, coordination, or
31 management of health care and related services by one or more health
32 care providers or health care facilities, including the coordination or
33 management of health care by a health care provider or health care
34 facility with a third party; consultation between health care providers
35 or health care facilities relating to a patient; or the referral of a
36 patient for health care from one health care provider or health care
37 facility to another.

1 **Sec. 2.** RCW 70.02.020 and 2005 c 468 s 2 are each amended to read
2 as follows:

3 (1) Except as authorized (~~in RCW 70.02.050~~) elsewhere in this
4 chapter, a health care provider, an individual who assists a health
5 care provider in the delivery of health care, or an agent and employee
6 of a health care provider may not disclose health care information
7 about a patient to any other person without the patient's written
8 authorization. A disclosure made under a patient's written
9 authorization must conform to the authorization.

10 (2) A patient has a right to receive an accounting of disclosures
11 of health care information made by a health care provider or a health
12 care facility in the six years before the date on which the accounting
13 is requested, except for disclosures:

- 14 (a) To carry out treatment, payment, and health care operations;
- 15 (b) To the patient of health care information about him or her;
- 16 (c) Incident to a use or disclosure that is otherwise permitted or
17 required;
- 18 (d) Pursuant to an authorization where the patient authorized the
19 disclosure of health care information about himself or herself;
- 20 (e) Of directory information;
- 21 (f) To persons involved in the patient's care;
- 22 (g) For national security or intelligence purposes if an accounting
23 of disclosures is not permitted by law;
- 24 (h) To correctional institutions or law enforcement officials if an
25 accounting of disclosures is not permitted by law; (~~and~~)
- 26 (i) Of a limited data set that excludes direct identifiers of the
27 patient or of relatives, employers, or household members of the
28 patient; and
- 29 (j) As provided in RCW 71.05.425.

30 **Sec. 3.** RCW 70.02.050 and 2007 c 156 s 12 are each amended to read
31 as follows:

32 (1) A health care provider or health care facility may disclose
33 health care information about a patient without the patient's
34 authorization to the extent a recipient needs to know the information,
35 if the disclosure is:

- 36 (a) To a person who the provider or facility reasonably believes is
37 providing health care to the patient;

1 (b) To any other person who requires health care information for
2 health care education, or to provide planning, quality assurance, peer
3 review, or administrative, legal, financial, actuarial services to, or
4 other health care operations for or on behalf of the health care
5 provider or health care facility; or for assisting the health care
6 provider or health care facility in the delivery of health care and the
7 health care provider or health care facility reasonably believes that
8 the person:

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

11 (ii) Will take appropriate steps to protect the health care
12 information;

13 ~~(c) ((To any other health care provider or health care facility
14 reasonably believed to have previously provided health care to the
15 patient, to the extent necessary to provide health care to the patient,
16 unless the patient has instructed the health care provider or health
17 care facility in writing not to make the disclosure;~~

18 ~~(d) To any person if the health care provider or health care
19 facility reasonably believes that disclosure will avoid or minimize an
20 imminent danger to the health or safety of the patient or any other
21 individual, however there is no obligation under this chapter on the
22 part of the provider or facility to so disclose;~~

23 ~~(e) To immediate family members of the patient, including a
24 patient's state registered domestic partner, or any other individual
25 with whom the patient is known to have a close personal relationship,
26 if made in accordance with good medical or other professional practice,
27 unless the patient has instructed the health care provider or health
28 care facility in writing not to make the disclosure;~~

29 ~~(f) To a health care provider or health care facility who is the
30 successor in interest to the health care provider or health care
31 facility maintaining the health care information;~~

32 ~~(g)) For use in a research project that an institutional review
33 board has determined:~~

34 (i) Is of sufficient importance to outweigh the intrusion into the
35 privacy of the patient that would result from the disclosure;

36 (ii) Is impracticable without the use or disclosure of the health
37 care information in individually identifiable form;

1 (iii) Contains reasonable safeguards to protect the information
2 from redisclosure;

3 (iv) Contains reasonable safeguards to protect against identifying,
4 directly or indirectly, any patient in any report of the research
5 project; and

6 (v) Contains procedures to remove or destroy at the earliest
7 opportunity, consistent with the purposes of the project, information
8 that would enable the patient to be identified, unless an institutional
9 review board authorizes retention of identifying information for
10 purposes of another research project;

11 ~~((h) To a person who obtains information for purposes of an audit,
12 if that person agrees in writing to:~~

13 ~~(i) Remove or destroy, at the earliest opportunity consistent with
14 the purpose of the audit, information that would enable the patient to
15 be identified; and~~

16 ~~(ii) Not to disclose the information further, except to accomplish
17 the audit or report unlawful or improper conduct involving fraud in
18 payment for health care by a health care provider or patient, or other
19 unlawful conduct by the health care provider;~~

20 ~~(i) To an official of a penal or other custodial institution in
21 which the patient is detained;~~

22 ~~(j) To provide directory information, unless the patient has
23 instructed the health care provider or health care facility not to make
24 the disclosure;~~

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

32 ~~(l) To federal, state, or local law enforcement authorities and the
33 health care provider, health care facility, or third party payor
34 believes in good faith that the health care information disclosed
35 constitutes evidence of criminal conduct that occurred on the premises
36 of the health care provider, health care facility, or third party
37 payor;~~

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

9 ~~((n))~~ (d) For payment, including information necessary for a
10 recipient to make a claim, or for a claim to be made on behalf of a
11 recipient for aid, insurance, or medical assistance to which he or she
12 may be entitled.

13 (2) A health care provider shall disclose health care information
14 about a patient without the patient's authorization if the disclosure
15 is:

16 (a) To federal, state, or local public health authorities, to the
17 extent the health care provider is required by law to report health
18 care information; when needed to determine compliance with state or
19 federal licensure, certification or registration rules or laws; or when
20 needed to protect the public health;

21 ~~(b) ((To federal, state, or local law enforcement authorities to~~
22 ~~the extent the health care provider is required by law;~~

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

- 34 ~~(i) The name of the patient;~~
35 ~~(ii) The patient's residence;~~
36 ~~(iii) The patient's sex;~~
37 ~~(iv) The patient's age;~~
38 ~~(v) The patient's condition;~~

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

3 ~~(vii) Whether the patient was conscious when admitted;~~

4 ~~(viii) The name of the health care provider making the~~
5 ~~determination in (c)(v), (vi), and (vii) of this subsection;~~

6 ~~(ix) Whether the patient has been transferred to another facility;~~
7 ~~and~~

8 ~~(x) The patient's discharge time and date;~~

9 ~~(d)) To county coroners and medical examiners for the~~
10 ~~investigations of deaths((;~~

11 ~~(e) Pursuant to compulsory process in accordance with RCW~~
12 ~~70.02.060.~~

13 ~~(3) All state or local agencies obtaining patient health care~~
14 ~~information pursuant to this section shall adopt rules establishing~~
15 ~~their record acquisition, retention, and security policies that are~~
16 ~~consistent with this chapter)).~~

17 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.02 RCW
18 to read as follows:

19 (1) A health care provider or health care facility may disclose
20 health care information, except for information related to sexually
21 transmitted diseases and information related to mental health services,
22 about a patient without the patient's authorization, to:

23 (a) Any other health care provider or health care facility
24 reasonably believed to have previously provided health care to the
25 patient, to the extent necessary to provide health care to the patient,
26 unless the patient has instructed the health care provider or health
27 care facility in writing not to make the disclosure;

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

34 (c) A health care provider or health care facility who is the
35 successor in interest to the health care provider or health care
36 facility maintaining the health care information;

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

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

6 (ii) Not to disclose the information further, except to accomplish
7 the audit or report unlawful or improper conduct involving fraud in
8 payment for health care by a health care provider or patient, or other
9 unlawful conduct by the health care provider;

10 (e) Provide directory information, unless the patient has
11 instructed the health care provider or health care facility not to make
12 the disclosure;

13 (f) Fire, police, sheriff, or other public authority, that brought,
14 or caused to be brought, the patient to the health care facility or
15 health care provider if the disclosure is limited to the patient's
16 name, residence, sex, age, occupation, condition, diagnosis, estimated
17 or actual discharge date, or extent and location of injuries as
18 determined by a physician, and whether the patient was conscious when
19 admitted;

20 (g) Federal, state, or local law enforcement authorities and the
21 health care provider, health care facility, or third-party payor
22 believes in good faith that the health care information disclosed
23 constitutes evidence of criminal conduct that occurred on the premises
24 of the health care provider, health care facility, or third-party
25 payor; and

26 (h) Another health care provider, health care facility, or third-
27 party payor for the health care operations of the health care provider,
28 health care facility, or third-party payor that receives the
29 information, if each entity has or had a relationship with the patient
30 who is the subject of the health care information being requested, the
31 health care information pertains to such relationship, and the
32 disclosure is for the purposes described in RCW 70.02.010(8) (a) and
33 (b).

34 (2) A health care provider shall disclose health care information,
35 except for information related to sexually transmitted diseases and
36 information related to mental health services, about a patient without
37 the patient's authorization if the disclosure is:

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

3 (b) To federal, state, or local law enforcement authorities, upon
4 receipt of a written or oral request made to a nursing supervisor,
5 administrator, or designated privacy official, in a case in which the
6 patient is being treated or has been treated for a bullet wound,
7 gunshot wound, powder burn, or other injury arising from or caused by
8 the discharge of a firearm, or an injury caused by a knife, an ice
9 pick, or any other sharp or pointed instrument which federal, state, or
10 local law enforcement authorities reasonably believe to have been
11 intentionally inflicted upon a person, or a blunt force injury that
12 federal, state, or local law enforcement authorities reasonably believe
13 resulted from a criminal act, the following information, if known:

14 (i) The name of the patient;

15 (ii) The patient's residence;

16 (iii) The patient's sex;

17 (iv) The patient's age;

18 (v) The patient's condition;

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

21 (vii) Whether the patient was conscious when admitted;

22 (viii) The name of the health care provider making the
23 determination in (b)(v), (vi), and (vii) of this subsection;

24 (ix) Whether the patient has been transferred to another facility;
25 and

26 (x) The patient's discharge time and date;

27 (c) Pursuant to compulsory process in accordance with RCW
28 70.02.060.

29 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.02 RCW
30 to read as follows:

31 A health care provider or health care facility may disclose health
32 care information, except for information related to sexually
33 transmitted diseases, about a patient without the patient's
34 authorization:

35 (1) To any person if the health care provider or health care
36 facility reasonably believes that disclosure will avoid or minimize an

1 imminent danger to the health or safety of the patient or any other
2 individual. However, there is no obligation under this chapter on the
3 part of the provider or facility to so disclose; or

4 (2) To an official of a penal or other custodial institution in
5 which the patient is detained.

6 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.02 RCW
7 to read as follows:

8 (1) No person may disclose or be compelled to disclose the identity
9 of any person who has investigated, considered, or requested a test or
10 treatment for a sexually transmitted disease, except as authorized by
11 this section, RCW 70.02.050, or chapter 70.24 RCW.

12 (2) No person may disclose or be compelled to disclose information
13 and records related to sexually transmitted diseases. A person may
14 disclose information related to sexually transmitted diseases about a
15 patient without the patient's authorization, to the extent a recipient
16 needs to know the information, if the disclosure is to:

17 (a) The subject of the test or the subject's legal representative
18 for health care decisions in accordance with RCW 7.70.065, with the
19 exception of such a representative of a minor child over fourteen years
20 of age and otherwise competent;

21 (b) The state public health officer, a local public health officer,
22 or the centers for disease control of the United States public health
23 service in accordance with reporting requirements for a diagnosed case
24 of a sexually transmitted disease;

25 (c) A health facility or health care provider that procures,
26 processes, distributes, or uses: (i) A human body part, tissue, or
27 blood from a deceased person with respect to medical information
28 regarding that person; (ii) semen, including that was provided prior to
29 March 23, 1988, for the purpose of artificial insemination; or (iii)
30 blood specimens;

31 (d) Any state or local public health officer conducting an
32 investigation pursuant to RCW 70.24.024, so long as the record was
33 obtained by means of court-ordered HIV testing pursuant to RCW
34 70.24.340 or 70.24.024;

35 (e) A person allowed access to the record by a court order granted
36 after application showing good cause therefor. In assessing good
37 cause, the court shall weigh the public interest and the need for

1 disclosure against the injury to the patient, to the physician-patient
2 relationship, and to the treatment services. Upon the granting of the
3 order, the court, in determining the extent to which any disclosure of
4 all or any part of the record of any such test is necessary, shall
5 impose appropriate safeguards against unauthorized disclosure. An
6 order authorizing disclosure must: (i) Limit disclosure to those parts
7 of the patient's record deemed essential to fulfill the objective for
8 which the order was granted; (ii) limit disclosure to those persons
9 whose need for information is the basis for the order; and (iii)
10 include any other appropriate measures to keep disclosure to a minimum
11 for the protection of the patient, the physician-patient relationship,
12 and the treatment services, including, but not limited to, the written
13 statement set forth in subsection (5) of this section;

14 (f) Persons who, because of their behavioral interaction with the
15 infected individual, have been placed at risk for acquisition of a
16 sexually transmitted disease, as provided in RCW 70.24.022, if the
17 health officer or authorized representative believes that the exposed
18 person was unaware that a risk of disease exposure existed and that the
19 disclosure of the identity of the infected person is necessary;

20 (g) A law enforcement officer, firefighter, health care provider,
21 health care facility staff person, department of correction's staff
22 person, jail staff person, or other persons as defined by the board in
23 rule pursuant to RCW 70.24.340(4), who has requested a test of a person
24 whose bodily fluids he or she has been substantially exposed to,
25 pursuant to RCW 70.24.340(4), if a state or local public health officer
26 performs the test; and

27 (h) A department of social and health services worker, a child
28 placing agency worker, or a guardian ad litem who is responsible for
29 making or reviewing placement or case-planning decisions or
30 recommendations to the court regarding a child, who is less than
31 fourteen years of age, has a sexually transmitted disease, and is in
32 the custody of the department of social and health services or a
33 licensed child placing agency. This information may also be received
34 by a person responsible for providing residential care for such a child
35 when the department of social and health services or a licensed child
36 placing agency determines that it is necessary for the provision of
37 child care services.

1 (3) No person to whom the results of a test for a sexually
2 transmitted disease have been disclosed pursuant to subsection (2) of
3 this section may disclose the test results to another person except as
4 authorized by that subsection.

5 (4) The release of sexually transmitted disease information
6 regarding an offender or detained person, except as provided in
7 subsection (2)(d) of this section, is governed as follows:

8 (a) The sexually transmitted disease status of a department of
9 corrections offender who has had a mandatory test conducted pursuant to
10 RCW 70.24.340(1), 70.24.360, or 70.24.370 must be made available by
11 department of corrections health care providers and local public health
12 officers to the department of corrections health care administrator or
13 infection control coordinator of the facility in which the offender is
14 housed. The information made available to the health care
15 administrator or the infection control coordinator under this
16 subsection (4)(a) may be used only for disease prevention or control
17 and for protection of the safety and security of the staff, offenders,
18 and the public. The information may be submitted to transporting
19 officers and receiving facilities, including facilities that are not
20 under the department of corrections' jurisdiction according to the
21 provisions of (d) and (e) of this subsection.

22 (b) The sexually transmitted disease status of a person detained in
23 a jail who has had a mandatory test conducted pursuant to RCW
24 70.24.340(1), 70.24.360, or 70.24.370 must be made available by the
25 local public health officer to a jail health care administrator or
26 infection control coordinator. The information made available to a
27 health care administrator under this subsection (4)(b) may be used only
28 for disease prevention or control and for protection of the safety and
29 security of the staff, offenders, detainees, and the public. The
30 information may be submitted to transporting officers and receiving
31 facilities according to the provisions of (d) and (e) of this
32 subsection.

33 (c) Information regarding the sexually transmitted disease status
34 of an offender or detained person is confidential and may be disclosed
35 by a correctional health care administrator or infection control
36 coordinator or local jail health care administrator or infection
37 control coordinator only as necessary for disease prevention or control
38 and for protection of the safety and security of the staff, offenders,

1 and the public. Unauthorized disclosure of this information to any
2 person may result in disciplinary action, in addition to the penalties
3 prescribed in RCW 70.24.080 or any other penalties as may be prescribed
4 by law.

5 (d) Notwithstanding the limitations on disclosure contained in (a),
6 (b), and (c) of this subsection, whenever any member of a jail staff or
7 department of corrections staff has been substantially exposed to the
8 bodily fluids of an offender or detained person, then the results of
9 any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or
10 70.24.370, must be immediately disclosed to the staff person in
11 accordance with the Washington Administrative Code rules governing
12 employees' occupational exposure to bloodborne pathogens. Disclosure
13 must be accompanied by appropriate counseling for the staff member,
14 including information regarding follow-up testing and treatment.
15 Disclosure must also include notice that subsequent disclosure of the
16 information in violation of this chapter or use of the information to
17 harass or discriminate against the offender or detainee may result in
18 disciplinary action, in addition to the penalties prescribed in RCW
19 70.24.080, and imposition of other penalties prescribed by law.

20 (e) The staff member must also be informed whether the offender or
21 detained person had any other communicable disease, as defined in RCW
22 72.09.251(3), when the staff person was substantially exposed to the
23 offender's or detainee's bodily fluids.

24 (f) The test results of voluntary and anonymous HIV testing or HIV-
25 related condition may not be disclosed to a staff person except as
26 provided in this section and RCW 70.02.050(1)(d) and 70.24.340(4). A
27 health care administrator or infection control coordinator may provide
28 the staff member with information about how to obtain the offender's or
29 detainee's test results under this section and RCW 70.02.050(1)(d) and
30 70.24.340(4).

31 (5) Upon request of the victim, disclosure of test results under
32 this section to victims of sexual offenses under chapter 9A.44 RCW must
33 be made if the result is negative or positive. The county prosecuting
34 attorney shall notify the victim of the right to such disclosure. The
35 disclosure must be accompanied by appropriate counseling, including
36 information regarding follow-up testing.

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

3 (1) Except as provided in this section, RCW 70.02.050, 71.05.445,
4 70.96A.150, 74.09.295, sections 5 and 8 of this act, or pursuant to a
5 valid authorization under RCW 70.02.030, the fact of admission to a
6 provider for mental health services and all information and records
7 compiled, obtained, or maintained in the course of providing mental
8 health services to either voluntary or involuntary recipients of
9 services at public or private agencies must be confidential.

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

13 (a) In communications between qualified professional persons to
14 meet the requirements of chapter 71.05 RCW, in the provision of
15 services or appropriate referrals, or in the course of guardianship
16 proceedings if provided to a professional person:

17 (i) Employed by the facility;

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

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

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

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

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

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

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

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

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

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

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

8 (d)(i) To the courts as necessary to the administration of this
9 chapter or to a court ordering an evaluation or treatment under chapter
10 10.77 RCW solely for the purpose of preventing the entry of any
11 evaluation or treatment order that is inconsistent with any order
12 entered under this chapter.

13 (ii) To a court or its designee in which a motion under chapter
14 10.77 RCW has been made for involuntary medication of a defendant for
15 the purpose of competency restoration.

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

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

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

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

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

1 interest of the committed person or others. Information must be
2 disclosed only after giving notice to the committed person and the
3 person's counsel;

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

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

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

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

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

29 (k) To mark headstones or otherwise memorialize patients interred
30 at state hospital cemeteries. The department of social and health
31 services shall make available the name, date of birth, and date of
32 death of patients buried in state hospital cemeteries fifty years after
33 the death of a patient;

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

37 (i) Only the fact, place, and date of involuntary commitment, an
38 official copy of any order or orders of commitment, and an official

1 copy of any written or oral notice of ineligibility to possess a
2 firearm that was provided to the person pursuant to RCW 9.41.047(1),
3 shall be disclosed upon request;

4 (ii) The law enforcement and prosecuting attorneys may only release
5 the information obtained to the person's attorney as required by court
6 rule and to a jury or judge, if a jury is waived, that presides over
7 any trial at which the person is charged with violating RCW
8 9.41.040(2)(a)(ii);

9 (iii) Disclosure under this subsection is mandatory for the
10 purposes of the federal health insurance portability and accountability
11 act;

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

22 (ii) Except as otherwise provided in this chapter, the uniform
23 health care information act, chapter 70.02 RCW, applies to all records
24 and information compiled, obtained, or maintained in the course of
25 providing services;

26 (n) Pursuant to lawful order of a court;

27 (o) To qualified staff members of the department, to the director
28 of regional support networks, to resource management services
29 responsible for serving a patient, or to service providers designated
30 by resource management services as necessary to determine the progress
31 and adequacy of treatment and to determine whether the person should be
32 transferred to a less restrictive or more appropriate treatment
33 modality or facility. The information must remain confidential;

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

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

4 (r) 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
7 contained in the treatment records could be injurious to the patient's
8 health. Disclosure must be limited to the portions of the records
9 necessary to meet the medical emergency;

10 (s) Consistent with the requirements of the federal health
11 information portability and accountability act, to a licensed mental
12 health professional, as defined in RCW 71.05.020, or a health care
13 professional licensed under chapter 18.71, 18.71A, 18.57, 18.57A,
14 18.79, or 18.36A RCW who is providing care to a person, or to whom a
15 person has been referred for evaluation or treatment, to assure
16 coordinated care and treatment of that person. Psychotherapy notes, as
17 defined in 45 C.F.R. Sec. 164.501, may not be released without
18 authorization of the person who is the subject of the request for
19 release of information;

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

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

32 (v) 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 (w) To staff members of the protection and advocacy agency or to
38 staff members of a private, nonprofit corporation for the purpose of

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

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

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

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

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

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

21 The fact of admission and all information and records related to
22 mental health services obtained through treatment under chapter 71.34
23 RCW is confidential. Confidential information may be disclosed only:

24 (1) In communications between mental health professionals to meet
25 the requirements of this chapter, in the provision of services to the
26 minor, or in making appropriate referrals;

27 (2) In the course of guardianship or dependency proceedings;

28 (3) To the minor, the minor's parent, and the minor's attorney,
29 subject to RCW 13.50.100;

30 (4) To the courts as necessary to the administration of this
31 chapter;

32 (5) To law enforcement officers or public health officers as
33 necessary to carry out the responsibilities of their office. However,
34 only the fact and date of admission, and the date of discharge, the
35 name and address of the treatment provider, if any, and the last known
36 address must be disclosed upon request;

1 (6) To law enforcement officers, public health officers, relatives,
2 and other governmental law enforcement agencies, if a minor has escaped
3 from custody, disappeared from an evaluation and treatment facility,
4 violated conditions of a less restrictive treatment order, or failed to
5 return from an authorized leave, and then only such information as may
6 be necessary to provide for public safety or to assist in the
7 apprehension of the minor. The officers are obligated to keep the
8 information confidential in accordance with this chapter;

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

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

27 (9) To a minor's next of kin, attorney, guardian, or conservator,
28 if any, the information that the minor is presently in the facility or
29 that the minor is seriously physically ill and a statement evaluating
30 the mental and physical condition of the minor as well as a statement
31 of the probable duration of the minor's confinement;

32 (10) Upon the death of a minor, to the minor's next of kin;

33 (11) To a facility in which the minor resides or will reside;

34 (12) To law enforcement officers and to prosecuting attorneys as
35 are necessary to enforce RCW 9.41.040(2)(a)(ii).

36 (a) The extent of information that may be released is limited as
37 follows:

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

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

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

14 (b) This section may not be construed to prohibit the compilation
15 and publication of statistical data for use by government or
16 researchers under standards, including standards to assure maintenance
17 of confidentiality, set forth by the secretary. The fact of admission
18 and all information obtained pursuant to this chapter are not
19 admissible as evidence in any legal proceeding outside this chapter,
20 except guardianship or dependency, without the written consent of the
21 minor or the minor's parent;

22 (13) For the purpose of a correctional facility participating in
23 the postinstitutional medical assistance system supporting the
24 expedited medical determinations and medical suspensions as provided in
25 RCW 74.09.555 and 74.09.295.

26 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.02 RCW
27 to read as follows:

28 (1) The definitions in this subsection apply throughout this
29 section unless the context clearly requires otherwise.

30 (a) "Information related to mental health services" means all
31 information and records compiled, obtained, or maintained in the course
32 of providing services to either voluntary or involuntary recipients of
33 services by a mental health service provider. This may include
34 documents of legal proceedings under this chapter or chapter 71.05 or
35 10.77 RCW, or somatic health care information.

36 (b) "Mental health service provider" means a public or private
37 agency that provides services to persons with mental disorders as

1 defined under RCW 71.34.020 and receives funding from public sources.
2 This includes evaluation and treatment facilities as defined in RCW
3 71.34.020, community mental health service delivery systems, or
4 community mental health programs, as defined in RCW 71.24.025, and
5 facilities conducting competency evaluations and restoration under
6 chapter 10.77 RCW.

7 (2) Information related to mental health services delivered to a
8 person subject to chapter 9.94A or 9.95 RCW shall be released, upon
9 request, by a mental health service provider to department of
10 corrections personnel for whom the information is necessary to carry
11 out the responsibilities of their office. The information must be
12 provided only for the purpose of completing presentence investigations,
13 supervision of an incarcerated person, planning for and provision of
14 supervision of a person, or assessment of a person's risk to the
15 community. The request shall be in writing and shall not require the
16 consent of the subject of the records.

17 (3) The information to be released to the department of corrections
18 shall include all relevant records and reports, as defined by rule,
19 necessary for the department of corrections to carry out its duties,
20 including those records and reports identified in subsection (2) of
21 this section.

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

29 (5) The department and the department of corrections, in
30 consultation with regional support networks, mental health service
31 providers as defined in subsection (1) of this section, mental health
32 consumers, and advocates for persons with mental illness, shall adopt
33 rules to implement the provisions of this section related to the type
34 and scope of information to be released. These rules shall:

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

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

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

7 (6) The information received by the department of corrections under
8 this section shall remain confidential and subject to the limitations
9 on disclosure outlined in RCW 71.34.340, except as provided in RCW
10 72.09.585.

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

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

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

23 NEW SECTION. **Sec. 10.** A new section is added to chapter 70.02 RCW
24 to read as follows:

25 (1)(a) A mental health service provider shall release to the
26 persons authorized under subsection (2) of this section, upon request:

27 (i) The fact, place, and date of an involuntary commitment, the
28 fact and date of discharge or release, and the last known address of a
29 person who has been committed under this chapter.

30 (ii) Information related to mental health services, in the format
31 determined under subsection (9) of this section, concerning a person
32 who:

33 (A) Is currently committed to the custody or supervision of the
34 department of corrections or the indeterminate sentence review board
35 under chapter 9.94A or 9.95 RCW;

36 (B) Has been convicted or found not guilty by reason of insanity of
37 a serious violent offense; or

1 (C) Was charged with a serious violent offense and the charges were
2 dismissed under RCW 10.77.086.

3 (b) Legal counsel may release such information to the persons
4 authorized under subsection (2) of this section on behalf of the mental
5 health service provider, so long as nothing in this subsection requires
6 the disclosure of attorney work product or attorney-client privileged
7 information.

8 (2) The information subject to release under subsection (1) of this
9 section must be released to law enforcement officers, personnel of a
10 county or city jail, designated mental health professionals, public
11 health officers, therapeutic court personnel, or personnel of the
12 department of corrections, including the indeterminate sentence review
13 board and personnel assigned to perform board-related duties, when such
14 information is requested during the course of business and for the
15 purpose of carrying out the responsibilities of the requesting person's
16 office. No mental health service provider or person employed by a
17 mental health service provider, or its legal counsel, may be liable for
18 information released to or used under the provisions of this section or
19 rules adopted under this section except under section 19 of this act.

20 (3) A person who requests information under subsection (1)(a)(ii)
21 of this section must comply with the following restrictions:

22 (a) Information must be requested only for the purposes permitted
23 by this subsection and for the purpose of carrying out the
24 responsibilities of the requesting person's office. Appropriate
25 purposes for requesting information under this section include:

26 (i) Completing presentence investigations or risk assessment
27 reports;

28 (ii) Assessing a person's risk to the community;

29 (iii) Assessing a person's risk of harm to self or others when
30 confined in a city or county jail;

31 (iv) Planning for and provision of supervision of an offender,
32 including decisions related to sanctions for violations of conditions
33 of community supervision; and

34 (v) Responding to an offender's failure to report for department of
35 corrections supervision;

36 (b) Information may not be requested under this section unless the
37 requesting person has reasonable suspicion that the individual who is
38 the subject of the information:

1 (i) Has engaged in activity indicating that a crime or a violation
2 of community custody or parole has been committed or, based upon his or
3 her current or recent past behavior, is likely to be committed in the
4 near future; or

5 (ii) Is exhibiting signs of a deterioration in mental functioning
6 which may make the individual appropriate for civil commitment under
7 this chapter; and

8 (c) Any information received under this section must be held
9 confidential and subject to the limitations on disclosure outlined in
10 this chapter, except:

11 (i) The information may be shared with other persons who have the
12 right to request similar information under subsection (2) of this
13 section, solely for the purpose of coordinating activities related to
14 the individual who is the subject of the information in a manner
15 consistent with the official responsibilities of the persons involved;

16 (ii) The information may be shared with a prosecuting attorney
17 acting in an advisory capacity for a person who receives information
18 under this section. A prosecuting attorney under this subsection is
19 subject to the same restrictions and confidentiality limitations as the
20 person who requested the information; and

21 (iii) As provided in RCW 72.09.585.

22 (4) A request for information related to mental health services
23 under this section does not require the consent of the subject of the
24 records. The request must be provided in writing, except to the extent
25 authorized in subsection (5) of this section. A written request may
26 include requests made by e-mail or facsimile so long as the requesting
27 person is clearly identified. The request must specify the information
28 being requested.

29 (5) In the event of an emergency situation that poses a significant
30 risk to the public or the offender, a mental health service provider,
31 or its legal counsel, shall release information related to mental
32 health services delivered to the offender and, if known, information
33 regarding where the offender is likely to be found to the department of
34 corrections or law enforcement upon request. The initial request may
35 be written or oral. All oral requests must be subsequently confirmed
36 in writing. Information released in response to an oral request is
37 limited to a statement as to whether the offender is or is not being

1 treated by the mental health service provider and the address or
2 information about the location or whereabouts of the offender.

3 (6) Disclosure under this section to state or local law enforcement
4 authorities is mandatory for the purposes of the federal health
5 insurance portability and accountability act.

6 (7) Whenever federal law or federal regulations restrict the
7 release of information contained in the treatment records of any
8 patient who receives treatment for alcoholism or drug dependency, the
9 release of the information may be restricted as necessary to comply
10 with federal law and regulations.

11 (8) This section does not modify the terms and conditions of
12 disclosure of information related to sexually transmitted diseases
13 under chapter 70.24 RCW.

14 (9) In collaboration with interested organizations, the department
15 shall develop a standard form for requests for information related to
16 mental health services made under this section and a standard format
17 for information provided in response to the requests. Consistent with
18 the goals of the health information privacy provisions of the federal
19 health insurance portability and accountability act, in developing the
20 standard form for responsive information, the department shall design
21 the form in such a way that the information disclosed is limited to the
22 minimum necessary to serve the purpose for which the information is
23 requested.

24 NEW SECTION. **Sec. 11.** A new section is added to chapter 70.02 RCW
25 to read as follows:

26 All state or local agencies obtaining patient health care
27 information pursuant to RCW 70.02.050 and sections 4 through 7 of this
28 act shall adopt rules establishing their record acquisition, retention,
29 and security policies that are consistent with this chapter.

30 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.02 RCW
31 to read as follows:

32 Whenever disclosure is made of information and records related to
33 sexually transmitted diseases pursuant to this chapter, except for RCW
34 70.02.050(1)(a) and section 7(2)(a) of this act, it must be accompanied
35 by a statement in writing which includes the following or substantially
36 similar language: "This information has been disclosed to you from

1 records whose confidentiality is protected by state law. State law
2 prohibits you from making any further disclosure of it without the
3 specific written authorization of the person to whom it pertains, or as
4 otherwise permitted by state law. A general authorization for the
5 release of medical or other information is NOT sufficient for this
6 purpose." An oral disclosure must be accompanied or followed by such
7 a notice within ten days.

8 NEW SECTION. **Sec. 13.** A new section is added to chapter 70.02 RCW
9 to read as follows:

10 (1) Resource management services, as defined in chapter 71.24 RCW,
11 shall establish procedures to provide reasonable and timely access to
12 individual mental health treatment records. However, access may not be
13 denied at any time to records of all medications and somatic treatments
14 received by the person.

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

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

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

30 NEW SECTION. **Sec. 14.** A new section is added to chapter 70.02 RCW
31 to read as follows:

32 When disclosure of information and records related to mental
33 services pertaining to a minor, as defined in RCW 71.34.020, is made,
34 the date and circumstances under which the disclosure was made, the
35 name or names of the persons or agencies to whom such disclosure was

1 made and their relationship if any, to the minor, and the information
2 disclosed must be entered promptly in the minor's clinical record.

3 NEW SECTION. **Sec. 15.** A new section is added to chapter 70.02 RCW
4 to read as follows:

5 Any person who requests or obtains confidential information and
6 records related to mental health services pursuant to this chapter
7 under false pretenses is guilty of a gross misdemeanor.

8 NEW SECTION. **Sec. 16.** A new section is added to chapter 70.02 RCW
9 to read as follows:

10 The department of social and health services shall adopt rules
11 related to the disclosure of mental health treatment records in this
12 chapter.

13 NEW SECTION. **Sec. 17.** A new section is added to chapter 70.02 RCW
14 to read as follows:

15 In addition to any other information required to be released under
16 this chapter, the department is authorized, pursuant to RCW 4.24.550,
17 to release relevant information that is necessary to protect the
18 public, concerning a specific person committed under RCW 71.05.280(3)
19 or 71.05.320(3)(c) following dismissal of a sex offense as defined in
20 RCW 9.94A.030.

21 NEW SECTION. **Sec. 18.** A new section is added to chapter 70.02 RCW
22 to read as follows:

23 (1) Except as provided in RCW 4.24.550, any person may bring an
24 action against an individual who has willfully released confidential
25 information and records related to mental health services concerning
26 him or her in violation of the provisions of this chapter, for the
27 greater of the following amounts:

28 (a) One thousand dollars; or

29 (b) Three times the amount of actual damages sustained, if any. It
30 is not a prerequisite to recovery under this section that the plaintiff
31 suffered or was threatened with special damages, as contrasted with
32 general damages.

33 (2) Any person may bring an action to enjoin the release of

1 confidential information or records concerning him or her or his or her
2 ward, in violation of the provisions of this chapter, and may in the
3 same action seek damages as provided in this section.

4 (3) The court may award to the plaintiff, should he or she prevail
5 in an action authorized by this section, reasonable attorneys' fees in
6 addition to those otherwise provided by law.

7 **Sec. 19.** RCW 71.05.660 and 2009 c 217 s 9 are each amended to read
8 as follows:

9 Nothing in this chapter or chapter 70.02, 70.96A, (~~(71.05,)~~) 71.34,
10 or 70.96B RCW shall be construed to interfere with communications
11 between physicians, psychiatric advanced registered nurse
12 practitioners, or psychologists and patients and attorneys and clients.

13 **Sec. 20.** RCW 71.05.680 and 2005 c 504 s 713 are each amended to
14 read as follows:

15 Any person who requests or obtains confidential information
16 pursuant to RCW 71.05.620 (~~(through 71.05.690)~~) under false pretenses
17 shall be guilty of a gross misdemeanor.

18 **Sec. 21.** RCW 71.05.690 and 2005 c 504 s 714 are each amended to
19 read as follows:

20 The department shall adopt rules to implement RCW 71.05.620
21 (~~(through 71.05.680)~~).

22 **Sec. 22.** RCW 71.24.035 and 2011 c 148 s 4 are each amended to read
23 as follows:

24 (1) The department is designated as the state mental health
25 authority.

26 (2) The secretary shall provide for public, client, and licensed
27 service provider participation in developing the state mental health
28 program, developing contracts with regional support networks, and any
29 waiver request to the federal government under medicaid.

30 (3) The secretary shall provide for participation in developing the
31 state mental health program for children and other underserved
32 populations, by including representatives on any committee established
33 to provide oversight to the state mental health program.

1 (4) The secretary shall be designated as the regional support
2 network if the regional support network fails to meet state minimum
3 standards or refuses to exercise responsibilities under RCW 71.24.045,
4 until such time as a new regional support network is designated under
5 RCW 71.24.320.

6 (5) The secretary shall:

7 (a) Develop a biennial state mental health program that
8 incorporates regional biennial needs assessments and regional mental
9 health service plans and state services for adults and children with
10 mental illness. The secretary shall also develop a six-year state
11 mental health plan;

12 (b) Assure that any regional or county community mental health
13 program provides access to treatment for the region's residents,
14 including parents who are respondents in dependency cases, in the
15 following order of priority: (i) Persons with acute mental illness;
16 (ii) adults with chronic mental illness and children who are severely
17 emotionally disturbed; and (iii) persons who are seriously disturbed.
18 Such programs shall provide:

19 (A) Outpatient services;

20 (B) Emergency care services for twenty-four hours per day;

21 (C) Day treatment for persons with mental illness which includes
22 training in basic living and social skills, supported work, vocational
23 rehabilitation, and day activities. Such services may include
24 therapeutic treatment. In the case of a child, day treatment includes
25 age-appropriate basic living and social skills, educational and
26 prevocational services, day activities, and therapeutic treatment;

27 (D) Screening for patients being considered for admission to state
28 mental health facilities to determine the appropriateness of admission;

29 (E) Employment services, which may include supported employment,
30 transitional work, placement in competitive employment, and other work-
31 related services, that result in persons with mental illness becoming
32 engaged in meaningful and gainful full or part-time work. Other
33 sources of funding such as the division of vocational rehabilitation
34 may be utilized by the secretary to maximize federal funding and
35 provide for integration of services;

36 (F) Consultation and education services; and

37 (G) Community support services;

1 (c) Develop and adopt rules establishing state minimum standards
2 for the delivery of mental health services pursuant to RCW 71.24.037
3 including, but not limited to:

4 (i) Licensed service providers. These rules shall permit a county-
5 operated mental health program to be licensed as a service provider
6 subject to compliance with applicable statutes and rules. The
7 secretary shall provide for deeming of compliance with state minimum
8 standards for those entities accredited by recognized behavioral health
9 accrediting bodies recognized and having a current agreement with the
10 department;

11 (ii) Regional support networks; and

12 (iii) Inpatient services, evaluation and treatment services and
13 facilities under chapter 71.05 RCW, resource management services, and
14 community support services;

15 (d) Assure that the special needs of persons who are minorities,
16 elderly, disabled, children, low-income, and parents who are
17 respondents in dependency cases are met within the priorities
18 established in this section;

19 (e) Establish a standard contract or contracts, consistent with
20 state minimum standards, RCW 71.24.320 and 71.24.330, which shall be
21 used in contracting with regional support networks. The standard
22 contract shall include a maximum fund balance, which shall be
23 consistent with that required by federal regulations or waiver
24 stipulations;

25 (f) Establish, to the extent possible, a standardized auditing
26 procedure which minimizes paperwork requirements of regional support
27 networks and licensed service providers. The audit procedure shall
28 focus on the outcomes of service and not the processes for
29 accomplishing them;

30 (g) Develop and maintain an information system to be used by the
31 state and regional support networks that includes a tracking method
32 which allows the department and regional support networks to identify
33 mental health clients' participation in any mental health service or
34 public program on an immediate basis. The information system shall not
35 include individual patient's case history files. Confidentiality of
36 client information and records shall be maintained as provided in this
37 chapter and (~~in RCW 71.05.390, 71.05.420, and 71.05.440~~) chapter
38 70.02 RCW;

1 (h) License service providers who meet state minimum standards;
2 (i) Certify regional support networks that meet state minimum
3 standards;
4 (j) Periodically monitor the compliance of certified regional
5 support networks and their network of licensed service providers for
6 compliance with the contract between the department, the regional
7 support network, and federal and state rules at reasonable times and in
8 a reasonable manner;
9 (k) Fix fees to be paid by evaluation and treatment centers to the
10 secretary for the required inspections;
11 (l) Monitor and audit regional support networks and licensed
12 service providers as needed to assure compliance with contractual
13 agreements authorized by this chapter;
14 (m) Adopt such rules as are necessary to implement the department's
15 responsibilities under this chapter;
16 (n) Assure the availability of an appropriate amount, as determined
17 by the legislature in the operating budget by amounts appropriated for
18 this specific purpose, of community-based, geographically distributed
19 residential services;
20 (o) Certify crisis stabilization units that meet state minimum
21 standards;
22 (p) Certify clubhouses that meet state minimum standards; and
23 (q) Certify triage facilities that meet state minimum standards.
24 (6) The secretary shall use available resources only for regional
25 support networks, except to the extent authorized, and in accordance
26 with any priorities or conditions specified, in the biennial
27 appropriations act.
28 (7) Each certified regional support network and licensed service
29 provider shall file with the secretary, on request, such data,
30 statistics, schedules, and information as the secretary reasonably
31 requires. A certified regional support network or licensed service
32 provider which, without good cause, fails to furnish any data,
33 statistics, schedules, or information as requested, or files fraudulent
34 reports thereof, may have its certification or license revoked or
35 suspended.
36 (8) The secretary may suspend, revoke, limit, or restrict a
37 certification or license, or refuse to grant a certification or license

1 for failure to conform to: (a) The law; (b) applicable rules and
2 regulations; (c) applicable standards; or (d) state minimum standards.

3 (9) The superior court may restrain any regional support network or
4 service provider from operating without certification or a license or
5 any other violation of this section. The court may also review,
6 pursuant to procedures contained in chapter 34.05 RCW, any denial,
7 suspension, limitation, restriction, or revocation of certification or
8 license, and grant other relief required to enforce the provisions of
9 this chapter.

10 (10) Upon petition by the secretary, and after hearing held upon
11 reasonable notice to the facility, the superior court may issue a
12 warrant to an officer or employee of the secretary authorizing him or
13 her to enter at reasonable times, and examine the records, books, and
14 accounts of any regional support network or service provider refusing
15 to consent to inspection or examination by the authority.

16 (11) Notwithstanding the existence or pursuit of any other remedy,
17 the secretary may file an action for an injunction or other process
18 against any person or governmental unit to restrain or prevent the
19 establishment, conduct, or operation of a regional support network or
20 service provider without certification or a license under this chapter.

21 (12) The standards for certification of evaluation and treatment
22 facilities shall include standards relating to maintenance of good
23 physical and mental health and other services to be afforded persons
24 pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall
25 otherwise assure the effectuation of the purposes of these chapters.

26 (13) The standards for certification of crisis stabilization units
27 shall include standards that:

28 (a) Permit location of the units at a jail facility if the unit is
29 physically separate from the general population of the jail;

30 (b) Require administration of the unit by mental health
31 professionals who direct the stabilization and rehabilitation efforts;
32 and

33 (c) Provide an environment affording security appropriate with the
34 alleged criminal behavior and necessary to protect the public safety.

35 (14) The standards for certification of a clubhouse shall at a
36 minimum include:

37 (a) The facilities may be peer-operated and must be
38 recovery-focused;

1 (b) Members and employees must work together;

2 (c) Members must have the opportunity to participate in all the
3 work of the clubhouse, including administration, research, intake and
4 orientation, outreach, hiring, training and evaluation of staff, public
5 relations, advocacy, and evaluation of clubhouse effectiveness;

6 (d) Members and staff and ultimately the clubhouse director must be
7 responsible for the operation of the clubhouse, central to this
8 responsibility is the engagement of members and staff in all aspects of
9 clubhouse operations;

10 (e) Clubhouse programs must be comprised of structured activities
11 including but not limited to social skills training, vocational
12 rehabilitation, employment training and job placement, and community
13 resource development;

14 (f) Clubhouse programs must provide in-house educational programs
15 that significantly utilize the teaching and tutoring skills of members
16 and assist members by helping them to take advantage of adult education
17 opportunities in the community;

18 (g) Clubhouse programs must focus on strengths, talents, and
19 abilities of its members;

20 (h) The work-ordered day may not include medication clinics, day
21 treatment, or other therapy programs within the clubhouse.

22 (15) The department shall distribute appropriated state and federal
23 funds in accordance with any priorities, terms, or conditions specified
24 in the appropriations act.

25 (16) The secretary shall assume all duties assigned to the
26 nonparticipating regional support networks under chapters 71.05((~~7~~))
27 and 71.34((~~7~~)) RCW and ((~~71.24~~—RCW)) this chapter. Such
28 responsibilities shall include those which would have been assigned to
29 the nonparticipating counties in regions where there are not
30 participating regional support networks.

31 The regional support networks, or the secretary's assumption of all
32 responsibilities under chapters 71.05((~~7~~)) and 71.34((~~7~~)) RCW and
33 ((~~71.24~~—RCW)) this chapter, shall be included in all state and federal
34 plans affecting the state mental health program including at least
35 those required by this chapter, the medicaid program, and P.L. 99-660.
36 Nothing in these plans shall be inconsistent with the intent and
37 requirements of this chapter.

38 (17) The secretary shall:

1 (a) Disburse funds for the regional support networks within sixty
2 days of approval of the biennial contract. The department must either
3 approve or reject the biennial contract within sixty days of receipt.

4 (b) Enter into biennial contracts with regional support networks.
5 The contracts shall be consistent with available resources. No
6 contract shall be approved that does not include progress toward
7 meeting the goals of this chapter by taking responsibility for: (i)
8 Short-term commitments; (ii) residential care; and (iii) emergency
9 response systems.

10 (c) Notify regional support networks of their allocation of
11 available resources at least sixty days prior to the start of a new
12 biennial contract period.

13 (d) Deny all or part of the funding allocations to regional support
14 networks based solely upon formal findings of noncompliance with the
15 terms of the regional support network's contract with the department.
16 Regional support networks disputing the decision of the secretary to
17 withhold funding allocations are limited to the remedies provided in
18 the department's contracts with the regional support networks.

19 (18) The department, in cooperation with the state congressional
20 delegation, shall actively seek waivers of federal requirements and
21 such modifications of federal regulations as are necessary to allow
22 federal medicaid reimbursement for services provided by freestanding
23 evaluation and treatment facilities certified under chapter 71.05 RCW.
24 The department shall periodically report its efforts to the appropriate
25 committees of the senate and the house of representatives.

26 NEW SECTION. **Sec. 23.** The following acts or parts of acts are
27 each repealed:

28 (1) RCW 70.24.105 (Disclosure of HIV antibody test or testing or
29 treatment of sexually transmitted diseases--Exchange of medical
30 information) and 2011 c 232 s 1;

31 (2) RCW 71.05.390 (Confidential information and records--
32 Disclosure) and 2011 c 305 s 4;

33 (3) RCW 71.05.640 (Treatment records--Access procedures) and 2005
34 c 504 s 712, 2005 c 504 s 113, 2000 c 94 s 11, & 1999 c 13 s 9;

35 (4) RCW 71.05.385 (Information subject to disclosure to authorized
36 persons--Restrictions) and 2011 1st sp.s. c 40 s 23 & 2009 c 320 s 2;

- 1 (5) RCW 71.05.420 (Records of disclosure) and 2009 c 217 s 7, 2005
2 c 504 s 110, 1990 c 3 s 113, & 1973 1st ex.s. c 142 s 47;
- 3 (6) RCW 71.05.440 (Action for unauthorized release of confidential
4 information--Liquidated damages--Treble damages--Injunction) and 1990
5 c 3 s 114, 1974 ex.s. c 145 s 28, & 1973 1st ex.s. c 142 s 49;
- 6 (7) RCW 71.05.427 (Persons committed following dismissal of sex
7 offense--Release of information authorized) and 1990 c 3 s 110;
- 8 (8) RCW 71.05.510 (Damages for excessive detention) and 1974 ex.s.
9 c 145 s 30 & 1973 1st ex.s. c 142 s 56;
- 10 (9) RCW 71.34.340 (Information concerning treatment of minors
11 confidential--Disclosure--Admissible as evidence with written consent)
12 and 2011 c 305 s 9, 2005 c 453 s 6, 2000 c 75 s 7, & 1985 c 354 s 18;
- 13 (10) RCW 71.34.345 (Mental health services information--Release to
14 department of corrections--Rules) and 2004 c 166 s 8, 2002 c 39 s 1, &
15 2000 c 75 s 2; and
- 16 (11) RCW 71.34.350 (Disclosure of information or records--Required
17 entries in minor's clinical record) and 1985 c 354 s 22.

18 NEW SECTION. **Sec. 24.** This act takes effect January 1, 2013.

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