

DISCLOSURE WITHOUT PERMISSION

Green – Follow Washington Law
Red – Keep HIPAA Privacy Standard

DISCLOSURES OF CONFIDENTIAL INFORMATION PERMITTED WITHOUT PATIENT PERMISSION

RCW 71.05.390

Confidential information and records -- Disclosure.

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

(1) Information and records may be disclosed only:

In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter 71.24 RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

Keep this from HIPAA: The final rule takes a different approach. First, to clarify that we are referring to individuals who are incarcerated in correctional facilities that are part of the criminal justice system or in the lawful custody of a law enforcement official--and not to individuals who are "detained" for non-criminal reasons, for example, in psychiatric institutions--Sec. 164.512(k) covers disclosure of protected health information to correctional institutions or law enforcement officials having such lawful custody. In addition, where a covered health care provider is also a health care component of a correctional institution, the final rule permits the covered entity to use protected health information in all cases in which it is permitted to disclose such information.

We define correctional institution as defined pursuant to 42 U.S.C. 13725(b)(1), as a "prison, jail, reformatory, work farm, detention center, or halfway house, or any other similar institution designed for the confinement or rehabilitation of criminal offenders." The rules regarding disclosure and use of protected health information specified in Sec. 164.512(k) cover individuals who are in transitional homes, and other facilities in which they are required by law to remain for correctional reasons and from which they are not allowed to leave. This section also covers individuals who are confined to psychiatric institutions for correctional reasons and who are not allowed to leave; however, it does not apply to disclosure of information about

individuals in psychiatric institutions for treatment purposes only, who are not there due to a crime or under a mandate from the criminal justice system. The disclosure rules described in this section do not cover release of protected health information about individuals in pretrial release, probation, or on parole, such persons are not considered to be incarcerated in a correctional facility.

As described in Sec. 164.512(k), correctional facility inmates' individually identifiable health information is not excluded from the definition of protected health information. When individuals are released from correctional facilities, they will have the same privacy rights that apply to all other individuals under this rule.

Section 164.512(k) of the final rule states that while individuals are in a correctional facility or in the lawful custody of a law enforcement official, covered entities (for example, the prison's clinic) can use or disclose protected health information about these individuals without authorization to the correctional facility or the law enforcement official having custody as necessary for: (1) The provision of health care to such individuals; (2) the health and safety of such individual or other inmates; (3) the health and safety of the officers of employees of or others at the correctional institution; and (4) the health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution or facility to another; (5) law enforcement on the premises of the correctional institution; and (6) the administration and maintenance of the safety, security, and good order of the correctional institution. This section is intended to allow, for example, a prison's doctor to disclose to a van driver transporting a criminal that the individual is a diabetic and frequently has seizures, as well as information about the appropriate action to take if the individual has a seizure while he or she is being transported.

We permit covered entities to disclose protected health information about these individuals if the correctional institution or law enforcement official represents that the protected health information is necessary for these purposes. Under 164.514(h), a covered entity may reasonably rely on the representation of such public officials.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation. Use a HIPAA compliant authorization if authorization is required for disclosure under Privacy.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

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

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

Program eval – must have a BA agreement in place before the disclosure, and must have the evaluator sign the oath of confidentiality required by state law. Research – provider must follow the Privacy provisions concerning disclosure for research and must have the researcher sign the oath.

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

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and **Law enforcement officers – follow Privacy except WA law restricting the amount of information provided and the law enforcement officers obligations to keep the info confidential**

For disclosures to public health officers, follow WA law

For disclosures to correctional institution, follow Privacy and obtain inmate authorization before disclosing PHI to the ISRB. For both disclosures, follow WA law restricting the amount of info and the recipients obligations to keep the info confidential.

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall

include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person. **Obtain patient or pt rep authorization before disclosing PHI to a patient's attorney.**

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

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence. **Follow Privacy, but include at least the info required by state law.**

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence. **Follow the Privacy Standards.**

Regarding the Release of Offender:

RCW 71.05.120 Exemptions from liability.

(1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if

reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel.

RCW 71.05.330 Early release -- Notice to court and prosecuting attorney -- Petition for hearing.

(1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

RCW 71.05.340

Outpatient treatment or care -- Conditional release -- Procedures for revocation.

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility

providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the county designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the county designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The county designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

RCW 71.05.425

Persons committed following dismissal of sex, violent, or felony harassment offense -- Notification of conditional release, final release, leave, transfer, or escape -- To whom given -- Definitions.

(1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
- (ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

- (i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; and
- (iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550. **Not referenced in preemption analysis.**

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

RCW 71.05.410

Notice of disappearance of patient.

When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee. **Follow Privacy for disclosing info to law enforcement for this purpose but continue to follow state requirement that the reporting is only to law enforcement officials designated by the physician, the professional person or the designee. For disclosures to family members follow Privacy.**

RCW 71.05.050 – Disclosure of Mental Health Information to County Mental Health Professionals

Voluntary application for mental health services -- Rights -- Review of condition and status -- Detention -- Person refusing voluntary admission, temporary detention.

Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate discharge, and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment or possible discharge, at which time they shall again be advised of their right to discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a

person voluntarily admitted who requests discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary.

RCW 71.05.445

Mental health services information -- Release to department of corrections -- Rules.

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

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

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

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

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

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

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

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

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

(6) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

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

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

[2002 c 39 § 2; 2000 c 75 § 3.]

NOTES:

Intent -- 2000 c 75: "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

WAC 388-865-0600 Purpose. In order to enhance and facilitate the department of corrections' ability to carry out its responsibility of planning and ensuring community protection, mental health records and information, as defined in this section, that are otherwise confidential shall be released by any mental health service provider to the department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office as authorized in RCW 71.05.445 and 71.34.225. Department of corrections personnel must use records only for the stated purpose and must assure that records remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

WAC 388-865-0610 Definitions. Relevant records and reports includes written documents obtained from other agencies or sources, often referred to as third-party documents, as well as documents produced by the agency receiving the request. Relevant records and reports do not include the documents restricted by either federal law or federal regulation related to treatment for alcoholism or drug dependency or the Health Insurance Portability and Accountability Act or state law related to sexually transmitted diseases, as outlined in RCW 71.05.445 and 71.34.225.

(1) **"Relevant records and reports"** means:

(a) Records and reports of inpatient treatment:

(i) Inpatient psychosocial assessment - Any initial, interval, or interim assessment usually completed by a person with a master's degree in social work (or equivalent) or equivalent document as established by the holders of the records and reports;

(ii) Inpatient intake assessment - The first assessment completed for an admission, usually completed by a psychiatrist or other physician or equivalent document as established by the holders of the records and reports;

(iii) Inpatient psychiatric assessment - Any initial, interim, or interval assessment usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;

(iv) Inpatient discharge/release summary - Summary of a hospital stay usually completed by a psychiatrist (or professional determined to be equivalent) or equivalent document as established by the holders of the records and reports;

(v) Inpatient treatment plan - A document designed to guide multi-disciplinary inpatient treatment or equivalent document as established by the holders of the records and reports;

(vi) Inpatient discharge and aftercare plan data base - A document designed to establish a plan of treatment and support following discharge from the inpatient setting or equivalent document as established by the holders of the records and reports.

(b) Records and reports of outpatient treatment:

(i) Outpatient intake evaluation - Any initial or intake evaluation or summary done by any mental health practitioner or case manager the purpose of which is to provide an initial clinical assessment in order to guide outpatient service delivery or equivalent document as established by the holders of the records and reports;

(ii) Outpatient periodic review - Any periodic update, summary, or review of treatment done by any mental health practitioner or case manager. This includes, but is not limited to: Documents indicating diagnostic change or update; annual or periodic psychiatric assessment, evaluation, update, summary, or review; annual or periodic treatment summary; concurrent review; individual service plan as required by WAC 388-865-0425 through 388-

865-0430, or equivalent document as established by the holders of the records and reports;

(iii) Outpatient crisis plan - A document designed to guide intervention during a mental health crisis or decompensation or equivalent document as established by the holders of the records and reports;

(iv) Outpatient discharge or release summary - Summary of outpatient treatment completed by a mental health professional or case manager at the time of termination of outpatient services or equivalent document as established by the holders of the records and reports;

(v) Outpatient treatment plan - A document designed to guide multi-disciplinary outpatient treatment and support or equivalent document as established by the holders of the records and reports.

(c) Records and reports regarding providers and medications:

(i) Current medications and adverse reactions - A list of all known current medications prescribed by the licensed practitioner to the individual and a list of any known adverse reactions or allergies to medications or to environmental agents;

(ii) Name, address and telephone number of the case manager or primary clinician.

(d) Records and reports of other relevant treatment and evaluation:

(i) Psychological evaluation - A formal report, assessment, or evaluation based on psychological tests conducted by a psychologist;

(ii) Neuropsychological evaluation - A formal neuropsychological report, assessment, or evaluation based on neuropsychological tests conducted by a psychologist;

(iii) Educational assessment - A formal report, assessment, or evaluation of educational needs or equivalent document as established by the holders of the records and reports;

(iv) Functional assessment - A formal report, assessment, or evaluation of degree of functional independence. This may include but is not limited to: occupational therapy evaluations, rehabilitative services data base activities assessment, residential level of care screening, problem severity scale, instruments used for functional assessment or equivalent document as established by the holders of the records and reports;

(v) Forensic evaluation - An evaluation or report conducted pursuant to chapter 10.77 RCW;

(vi) Offender/violence alert - A any documents pertaining to statutory obligations regarding dangerous or criminal behavior or to dangerous or criminal propensities. This includes, but is not limited to, formal documents specifically designed to track the need to provide or past provision of: Duty to warn, duty to report child/elder abuse, victim/witness notification, violent offender notification, and sexual/kidnaping offender notification per RCW 4.24.550, 10.77.205, 13.40.215, 13.40.217, 26.44.330, 71.05.120, 71.05.330, 71.05.340, 71.05.425, 71.09.140, and 74.34.035;

(vii) Risk assessment - Any tests or formal evaluations administered or conducted as part of a formal violence or criminal risk assessment process that is not specifically addressed in any psychological evaluation or neuropsychological evaluation.

(e) Records and reports of legal status - Legal documents are documents filed with the court or produced by the court indicating current legal status or legal obligations including, but not limited to:

(i) Legal documents pertaining to chapter 71.05 RCW;

(ii) Legal documents pertaining to chapter 71.34 RCW;

(iii) Legal documents containing court findings pertaining to chapter 10.77 RCW;

- (iv) Legal documents regarding guardianship of the person;
- (v) Legal documents regarding durable power of attorney;
- (vi) Legal or official documents regarding a protective payee;
- (vii) Mental health advance directive.

(2) **"Relevant information"** means descriptions of a consumer's participation in, and response to, mental health treatment and services not available in a relevant record or report, including all statutorily mandated reporting or duty to warn notifications as identified in WAC 388-865-610 (1)(d)(vi), Offender/Violence alert, and all requests for evaluations for involuntary civil commitments under chapter 71.05 RCW. The information may be provided in verbal or written form at the discretion of the mental health service provider.

WAC 388-865-0620 Scope. Many records and reports are updated on a regular or as needed basis. The scope of the records and reports to be released to the department of corrections are dependent upon the reason for the request.

(1) For the purpose of a presentence investigation release only the most recently completed or received records of those completed or received within the twenty-four-month period prior to the date of the request; or

(2) For all other purposes release all versions of records and reports that were completed or received within the ten year period prior to the date of the request that are still available

WAC 388-865-0630 Time frame. The mental health service provider shall provide the requested relevant records, reports and information to the authorized department of corrections person in a timely manner, according to the purpose of the request:

(1) Presentence investigation - within seven calendar days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the seven-day-period and provide the requested relevant records, reports or information within a mutually agreed to time period; or

(2) All other purposes - within thirty calendar days of the receipt of the request. If some or all of the requested relevant records, reports and information are not available within that time period the mental health service provider shall notify the authorized department of corrections person prior to the end of the thirty-day period and provide the requested relevant records, reports or information within a mutually agreed to time period.

WAC 388-865-0640 Written requests. The written request for relevant records, reports and information shall include:

(1) Verification that the person for whom records, reports and information are being requested is under the authority of the department of corrections, per chapter 9.94A RCW, and the expiration date of that authority.

(2) Sufficient information to identify the person for whom records, reports and information are being requested including name and other identifying data.

(3) Specification as to which records and reports are being requested and the purpose for the request.

(4) Specification as to what relevant information is requested and the purpose for the request.

(5) Identification of the department of corrections person to whom the records, reports and

information shall be sent, including the person's name, title and address.

(6) Name, title and signature of the requestor and date of the request.

CONTENT OF PATIENT PERMISSION

RCW 71.05.620

Treatment records -- Informed consent for disclosure of information -- Court files and records.

(1) Informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following information:

(a) The name of the individual, agency, or organization to which the disclosure is to be made;

(b) The name of the individual whose treatment record is being disclosed;

(c) The purpose or need for the disclosure;

(d) The specific type of information to be disclosed;

(e) The time period during which the consent is effective;

(f) The date on which the consent is signed; and

(g) The signature of the individual or person legally authorized to give consent for the individual.

(2) The files and records of court proceedings under chapter [71.05](#) RCW shall be closed but shall be accessible to any individual who is the subject of a petition and to the individual's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services.

DISCLOSURE FOR INSPECTION

RCW 71.12.520

Scope of examination.

Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department of health may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants.

RCW 71.12.540

Recommendations to be kept on file -- Records of inmates.

The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician, diagnosis, and date of discharge.

LICENSURE REQUIREMENTS

WAC 246-322-200 Clinical records. (1) The licensee shall establish and maintain an organized clinical record service, consistent with recognized principles of record management, directed, staffed, and equipped to:

(a) Ensure timely, complete and accurate identification, checking, processing, indexing, filing, and retrieval of records;

(b) Facilitate compilation, maintenance, analyses, and distribution of patient care statistics; and

(c) Protect records from undue deterioration and destruction.

(2) The licensee shall develop and maintain an individual clinical record for each person receiving care, treatment, or diagnostic service at the hospital.

(3) The licensee shall ensure prompt entry and filing of the following data into the clinical record for each period a patient receives inpatient or outpatient services:

(a) Identifying information;

(b) Assessment and diagnostic data including history of findings and treatment provided for the psychiatric condition for which the patient is treated in the hospital;

(c) Psychiatric evaluation including:

(i) Medical and psychiatric history and physical examination; and

(ii) Record of mental status;

(d) Comprehensive treatment plan;

(e) Authenticated orders for:

(i) Drugs or other therapies;

(ii) Therapeutic diets; and

(iii) Care and treatment, including standing medical orders used in the care and treatment of the patient, except standing medical emergency orders;

(f) Significant observations and events in the patient's clinical treatment;

(g) Any restraint of the patient;

(h) Data bases containing patient information;

(i) Original reports or durable, legible, direct copies of original reports, of all patient tests, diagnostic procedures and examinations performed on or for the patient;

(j) Description of therapies administered, including drug therapies;

(k) Nursing services;

(l) Progress notes recorded by the professional staff responsible for the care of the patient or others significantly involved in active treatment modalities; and

(m) A discharge plan and discharge summary.

- (4) The licensee shall ensure each entry includes:
- (a) Date;
 - (b) Time of day;
 - (c) Authentication by the individual making the entry; and
 - (d) Diagnosis, abbreviations and terminology consistent with:
 - (i) Fourth edition revised 1994 *The American Psychiatry Association Diagnostic and Statistical Manual of Mental Disorders*; and
 - (ii) *International Classification of Diseases, 9th edition, 1988*.
- (5) The licensee shall provide designated areas, designed to assure confidentiality, for reading, recording, and maintaining patient clinical records and for patients to review their own records.
- (6) The licensee shall share and release information relating to patients and former patients only as authorized by statute and administrative code, and shall protect patient confidentiality according to confidentiality requirements in chapters 70.02, 71.05, and 71.34 RCW.
- (7) The licensee shall retain and preserve:
- (a) Each patient's clinical records, excluding reports on referred outpatient diagnostic services, for:
 - (i) Adult patients, a minimum of ten years following the most recent discharge; or
 - (ii) Patients who are minors at the time of care, treatment, or diagnosis, a minimum of three years following the patient's eighteenth birth date, or ten years following the most recent discharge, whichever is longer;
 - (b) Reports on referred outpatient diagnostic services for at least two years;
 - (c) A master patient index card or equivalent for at least the same period of time as the corresponding clinical records; and
 - (d) Patients' clinical records, registers, indexes, and analyses of hospital service in original form or in photographic form in accordance with the provisions of chapter 5.46 RCW.

PATIENT RIGHTS

RCW 71.05.640

Treatment records -- Access procedures.

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

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

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW [71.05.610](#) through [71.05.690](#).

RCW 71.05.420

Records of disclosure.

Except as provided in RCW [71.05.425](#), when any disclosure of information or records is made as authorized by RCW [71.05.390](#) through [71.05.410](#), the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed.

RCW 71.05.650

Treatment records -- Notation of and access to released data.

Each time written information is released from a treatment record, the record's custodian shall make a notation in the record including the following: The name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The patient shall have access to this release data.

WAC 388-865-0430 Clinical record. The community support service provider must maintain a clinical record for each consumer and safeguard the record against loss, defacement, tampering, or use by unauthorized persons. The clinical record must contain:

- (1) An intake evaluation;
- (2) Evidence that the consumer rights statement was provided to the consumer;
- (3) A copy of any advance directives, powers of attorney or letters of guardianship provided by the consumer;
- (4) The crisis treatment plan when appropriate;
- (5) The individualized service plan and all changes in the plan;
- (6) Documentation that services are provided by or under the clinical supervision of a mental health professional;
- (7) Documentation that services are provided by, or under the clinical supervision, or the clinical consultation of a mental health specialist. Consultation must occur within thirty days of admission and periodically thereafter as specified by the mental health specialist;
- (8) Periodic documentation of the course of treatment and objective progress toward established goals for rehabilitation, recovery and reintegration into the mainstream of social, employment and educational choices;
- (9) A notation of extraordinary events affecting the consumer;
- (10) Documentation of mandatory reporting of abuse, neglect, or exploitation of consumers consistent with chapter [26.44](#) and [74.34](#) RCW;
- (11) Documentation of informed consent to treatment and medications by the consumer or legally responsible other;
- (12) Documentation of confidential information that has been released without the consent of the consumer including, but not limited to provisions in RCW [70.02.050](#), [71.05.390](#) and [71.05.630](#).

REPORTS REGARDING DANGEROUS OFFENDERS

RCW 71.24.480

Dangerous mentally ill offenders -- Limitation on liability due to treatment -- Reporting requirements.

(1) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a dangerous mentally ill offender who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

- (a) Gross negligence;
- (b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a dangerous mentally ill offender is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "dangerous mentally ill offender" means a person who has been identified under RCW [72.09.370](#) as an offender who: (a) Is reasonably believed to be dangerous to himself or herself or others; and (b) has a mental disorder.

REPORTS REGARDING VOLUNTARY ADMISSIONS – MINORS

RCW 71.12.560

Voluntary patients -- Receipt authorized -- Application -- Report.

The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. At the expiration of fourteen continuous days of treatment of a patient voluntarily committed in a private institution,

hospital, or sanitarium, if the period of voluntary commitment is to continue, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, date of birth, sex, place of birth, occupation, social security number, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services.

DISCLOSURE OF TREATMENT RECORDS ALLOWED WITHOUT PATIENT PERMISSION

RCW 71.05.630

Treatment records -- Confidential -- Release.

(1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter [42.48](#) RCW.

(d) Pursuant to lawful order of a court.

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

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be

injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter [71.05](#) RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW [71.05.390\(7\)](#), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW [71.05.445](#) and [71.34.225](#), release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter [71.05](#) RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

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

RCW 42.48.010

Definitions.

For the purposes of this chapter, the following definitions apply:

(1) "Individually identifiable" means that a record contains information which reveals or can likely be associated with the identity of the person or persons to whom the record pertains.

(2) "Legally authorized representative" means a person legally authorized to give consent for the disclosure of personal records on behalf of a minor or a legally incompetent adult.

(3) "Personal record" means any information obtained or maintained by a state agency which refers to a person and which is declared exempt from public disclosure, confidential, or privileged under state or federal law.

(4) "Research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, by a scientific research professional associated with a bona fide scientific research organization, or by a graduate student currently enrolled in an advanced academic degree curriculum, with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(5) "Research record" means an item or grouping of information obtained for the purpose of research from or about a person or extracted for the purpose of research from a personal record.

(6) "State agency" means: (a) The department of social and health services; (b) the department of corrections; (c) an institution of higher education as defined in [RCW 28B.10.016](#); or (d) the department of health.

RCW 42.48.020

Access to personal records.

(1) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes if informed written consent for the disclosure has been given to the appropriate department secretary, or the president of the institution, as applicable, or his or her designee, by the person to whom the record pertains or, in the case of minors and legally incompetent adults, the person's legally authorized representative.

(2) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes without the informed consent of the person to whom the record pertains or the person's legally authorized representative, only if:

(a) The state agency adopts research review and approval rules including, but not limited to, the requirement that the appropriate department secretary, or the president of the institution, as applicable, appoint a standing human research review board competent to review research proposals as to ethical and scientific soundness; and the review board determines that the disclosure request has scientific merit and is of importance in terms of the agency's program concerns, that the research purposes cannot be reasonably accomplished without disclosure of the information in individually identifiable form and without waiver of the informed consent of the person to whom the record pertains or the person's legally authorized representative, that disclosure risks have been minimized, and that remaining risks are outweighed by anticipated health, safety, or scientific benefits; and

(b) The disclosure does not violate federal law or regulations; and

(c) The state agency negotiates with the research professional receiving the records or record information a written and legally binding confidentiality agreement prior to disclosure. The agreement shall:

(i) Establish specific safeguards to assure the continued confidentiality and security of individually identifiable records or record information;

(ii) Ensure that the research professional will report or publish research findings and conclusions in a manner that does not permit identification of the person whose record was used for the research. Final research reports or publications shall not include photographs or other visual representations contained in personal records;

(iii) Establish that the research professional will destroy the individual identifiers associated with the records or record information as soon as the purposes of the research project have been accomplished and notify the agency to this effect in writing;

(iv) Prohibit any subsequent disclosure of the records or record information in individually identifiable form except as provided in RCW [42.48.040](#); and

(v) Provide for the signature of the research professional, of any of the research professional's team members who require access to the information in identified form, and of the agency official authorized to approve disclosure of identifiable records or record information for research purposes.

RCW 42.48.040

Disclosure by research professional.

No research professional who has established an individually identifiable research record from personal record information pursuant to RCW [42.48.020](#)(2), or who has established a research record from data or information voluntarily provided by an agency client or employee under a written confidentiality assurance for the explicit purpose of research, may disclose such a record in individually identifiable form unless:

(1) The person to whom the research record pertains or the person's legally authorized representative has given prior informed written consent for the disclosure; or

(2) The research professional reasonably believes that disclosure will prevent or minimize injury to a person and the disclosure is limited to information necessary to protect the person who has been or may be injured, and the research professional reports the disclosure only to the person involved or the person's guardian, the person's physician, and the agency; or

(3)(a) The research record is disclosed in individually identifiable form for the purposes of auditing or evaluating a research program; and

(b) The audit or evaluation is authorized or required by federal or state law or regulation or is based upon an explicit provision in a research contract, grant, or other written research agreement; and

(c) No subsequent disclosure of the research record in individually identifiable form will be made by the auditor or evaluator except as provided in this section; or

(4) The research record is furnished in compliance with a search warrant or court order: PROVIDED, That:

(a) The court issues the search warrant or judicial subpoena concerning the research record solely for the purpose of facilitating inquiry into an alleged violation of law by the research professional using the record for a research purpose or by the agency; and

(b) Any research record obtained pursuant to (a) of this subsection and any information directly or indirectly derived from the research record shall remain confidential to the extent possible and shall not be used as evidence in an administrative, judicial, or legislative proceeding except against the research professional using the record for a research purpose or against the state agency.

[1985 c 334 § 4.]

UNIVERSE OF DISCLOSURE

Continue to treat the WA statutes as the universe of recipients to which disclosure of mental health info may be made.

RCW 71.05.390

Confidential information and records -- Disclosure.

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be

obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person: (a) Employed by the facility; (b) who has medical responsibility for the patient's care; (c) who is a county designated mental health professional; (d) who is providing services under chapter [71.24](#) RCW; (e) who is employed by a state or local correctional facility where the person is confined; or (f) who is providing evaluation, treatment, or follow-up services under chapter [10.77](#) RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

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

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

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

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

/s/"

(6) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter [10.77](#) RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW [71.05.425](#) and [4.24.550](#), regarding persons committed under this chapter under

RCW [71.05.280](#)(3) and [71.05.320](#)(2)(c) after dismissal of a sex offense as defined in RCW [9.94A.030](#), the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

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

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

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

(12) To the persons designated in RCW [71.05.425](#) for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW [71.05.280\(3\)](#) and [71.05.320\(2\)\(c\)](#) after dismissal of a sex offense as defined in RCW [9.94A.030](#), is governed by RCW [4.24.550](#).

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW [71.05.400](#).

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter [42.17](#) RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW [71.05.280\(3\)](#) or [71.05.320\(2\)\(c\)](#) on charges that were dismissed pursuant to chapter [10.77](#) RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter [71.09](#) RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

RCW 71.05.630

Treatment records -- Confidential -- Release.

(1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

(a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.

(b) To the department, the director of regional support networks, or a qualified staff member designated by the director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter [42.48](#) RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service

providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter [71.05](#) RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW [71.05.390](#)(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW [71.05.445](#) and [71.34.225](#), release of records under this section is limited to:

(i) An evaluation report provided pursuant to a written supervision plan.

(ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.

(iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter [71.05](#) RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

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

WAC 388-865-0110 Access to records of registration. The mental health division, regional support networks, mental health prepaid health plans, and service providers must ensure that information about the fact that a consumer has or is receiving mental health services is not shared or released except as specified under RCW [71.05.390](#) and other laws and regulations about confidentiality as noted below in WAC [388-865-0115](#).

WAC 388-865-0115 Access to clinical records. There are numerous federal and state rules and regulations on the subjects of confidentiality and access to consumer clinical records. Many of the rules are located in chapter [70.02](#) RCW, RCW [71.05.390](#), [71.05.400](#), [71.05.410](#), [71.05.420](#), [71.05.430](#), [71.05.440](#), [71.05.445](#), [71.05.610](#) through [71.05.680](#), [71.34.160](#), [71.34.162](#), [71.34.170](#), [71.34.200](#), [71.34.210](#), [71.34.220](#), [71.34.225](#), [13.50.100](#)(4)(b), and 42 C.F.R. 431 and 438, and 42 C.F.R. Part 2 of the Code of Federal Regulations and are not repeated in these rules.