

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 11, 2016
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB16-1063 be amended as follows, and as so amended, be referred to the Committee of the Whole with favorable recommendation:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 12-43-218, **add** (2)
4 (d) as follows:

5 **12-43-218. Disclosure of confidential communications -**
6 **definition - repeal.** (2) Subsection (1) of this section does not apply
7 when:

8 (d) (I) A CLIENT, REGARDLESS OF AGE:

9 (A) MAKES AN ARTICULABLE AND SIGNIFICANT THREAT AGAINST
10 A SCHOOL OR THE OCCUPANTS OF A SCHOOL; OR

11 (B) EXHIBITS BEHAVIORS THAT, IN THE REASONABLE JUDGMENT
12 OF THE LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER, CREATE AN
13 ARTICULABLE AND SIGNIFICANT THREAT TO THE HEALTH OR SAFETY OF
14 STUDENTS, TEACHERS, ADMINISTRATORS, OR OTHER SCHOOL PERSONNEL.

15 (II) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO
16 DISCLOSES INFORMATION UNDER THIS PARAGRAPH (d) SHALL LIMIT THE
17 DISCLOSURE TO APPROPRIATE SCHOOL OR SCHOOL DISTRICT PERSONNEL
18 AND LAW ENFORCEMENT AGENCIES. SCHOOL OR SCHOOL DISTRICT
19 PERSONNEL TO WHOM THE INFORMATION IS DISCLOSED SHALL MAINTAIN
20 CONFIDENTIALITY OF THE DISCLOSED INFORMATION, REGARDLESS OF
21 WHETHER THE INFORMATION CONSTITUTES AN EDUCATION RECORD
22 SUBJECT TO FERPA, CONSISTENT WITH THE REQUIREMENTS OF FERPA

1 AND REGULATIONS AND APPLICABLE GUIDELINES ADOPTED UNDER
2 FERPA, BUT MAY DISCLOSE INFORMATION IN ACCORDANCE WITH SECTION
3 1232g (b) (1) OF FERPA AND 34 CFR 99.36 IF NECESSARY TO PROTECT
4 THE HEALTH OR SAFETY OF STUDENTS OR OTHER PERSONS.

5 (III) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO
6 DISCLOSES OR FAILS TO DISCLOSE A CONFIDENTIAL COMMUNICATION WITH
7 A CLIENT IN ACCORDANCE WITH THIS PARAGRAPH (d) IS NOT LIABLE FOR
8 DAMAGES IN ANY CIVIL ACTION FOR DISCLOSING OR NOT DISCLOSING THE
9 COMMUNICATION. THIS SUBPARAGRAPH (III) DOES NOT RESCIND ANY
10 STATUTORY DUTY TO WARN AND PROTECT SPECIFIED IN, AND DOES NOT
11 ELIMINATE ANY POTENTIAL CIVIL LIABILITY FOR FAILURE TO COMPLY
12 WITH, SECTION 13-21-117, C.R.S.

13 (IV) (A) THIS PARAGRAPH (d) DOES NOT APPLY TO AN EDUCATION
14 RECORD THAT, UNDER FERPA, IS EXEMPT FROM THE HIPAA PRIVACY
15 RULE.

16 (B) NOTWITHSTANDING SUBSECTION (6) OF THIS SECTION, THIS
17 PARAGRAPH (d) APPLIES TO COVERED ENTITIES, AS DEFINED IN HIPAA.

18 (V) AS USED IN THIS PARAGRAPH (d):

19 (A) "ARTICULABLE AND SIGNIFICANT THREAT" MEANS A THREAT
20 TO THE HEALTH OR SAFETY OF A PERSON THAT, BASED ON THE TOTALITY
21 OF THE CIRCUMSTANCES, CAN BE EXPLAINED OR ARTICULATED AND THAT
22 CONSTITUTES A THREAT OF SUBSTANTIAL BODILY HARM TO A PERSON.

23 (B) "FERPA" MEANS THE FEDERAL "FAMILY EDUCATION RIGHTS
24 AND PRIVACY ACT OF 1974", 20 U.S.C. SEC. 1232g.

25 (C) "HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE
26 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L.
27 104-191.

28 (D) "SCHOOL" MEANS A PUBLIC OR PRIVATE PRESCHOOL;
29 ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL; OR INSTITUTION OF
30 POSTSECONDARY EDUCATION DESCRIBED IN TITLE 23, C.R.S., INCLUDING
31 THE AURARIA HIGHER EDUCATION CENTER CREATED IN ARTICLE 70 OF
32 TITLE 23, C.R.S.

33 (VI) (A) THIS PARAGRAPH (d) TAKES EFFECT ONLY IF, IN
34 ACCORDANCE WITH SECTION 26-1-140, C.R.S., THE DEPARTMENT OF
35 HUMAN SERVICES APPLIES FOR AND IS GRANTED AN EXCEPTION TO THE
36 PRIVACY RULE UNDER HIPAA.

37 (B) THIS SUBPARAGRAPH (VI) IS REPEALED IF THE SECRETARY OF
38 THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES GRANTS THE
39 EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE EXECUTIVE
40 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL NOTIFY THE

1 REVISOR OF STATUTES IN WRITING IF THE CONDITION SPECIFIED IN THIS
2 SUB-SUBPARAGRAPH (B) OCCURS.

3 (C) THIS PARAGRAPH (d) IS REPEALED IF THE SECRETARY OF THE
4 FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES DENIES THE
5 REQUEST FOR AN EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE
6 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL
7 NOTIFY THE REVISOR OF STATUTES IN WRITING IF THE CONDITION
8 SPECIFIED IN THIS SUB-SUBPARAGRAPH (C) OCCURS.

9 **SECTION 2.** In Colorado Revised Statutes, **add** 26-1-140 as
10 follows:

11 **26-1-140. State exception to HIPAA - significant threat to**
12 **schools - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY
13 HEREBY DECLARES THAT, FOR THE HEALTH AND SAFETY OF COLORADO
14 SCHOOLS AND THEIR STUDENTS, TEACHERS, AND OTHER SCHOOL
15 PERSONNEL, A POLICY ENABLING MENTAL HEALTH PROFESSIONALS AND
16 SCHOOL OFFICIALS TO SHARE APPROPRIATE INFORMATION IN A
17 RESPONSIBLE MANNER IS NECESSARY AND SERVES A COMPELLING NEED
18 RELATED TO PUBLIC HEALTH, SAFETY, AND WELFARE. FURTHERMORE, THE
19 GENERAL ASSEMBLY DECLARES THAT SHARING APPROPRIATE
20 INFORMATION IS WARRANTED WHEN LEGITIMATE PRIVACY CONCERNS ARE
21 OUTWEIGHED BY THE NEED TO PROTECT SCHOOLS AND THEIR STUDENTS
22 AND STAFF.

23 (2) WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
24 SECTION, THE DEPARTMENT OF HUMAN SERVICES SHALL APPLY FOR AN
25 EXCEPTION TO THE PRIVACY RULE UNDER THE FEDERAL "HEALTH
26 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (HIPAA),
27 AS AMENDED, PUB.L. 104-191, IN THE MANNER SPECIFIED IN 45 CFR
28 160.204, TO ALLOW MENTAL HEALTH PROFESSIONALS TO DISCLOSE
29 CONFIDENTIAL COMMUNICATIONS WITH THEIR CLIENTS IN ACCORDANCE
30 WITH SECTION 12-43-218 (2) (d), C.R.S.

31 (3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2017.

32 **SECTION 3. Safety clause.** The general assembly hereby finds,
33 determines, and declares that this act is necessary for the immediate
34 preservation of the public peace, health, and safety."

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