

HB1063_L.005

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.HB16-1063 be amended as follows:

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
23 AND REGULATIONS AND APPLICABLE GUIDELINES ADOPTED UNDER
24 FERPA, BUT MAY DISCLOSE INFORMATION IN ACCORDANCE WITH SECTION
25 1232g (b) (1) OF FERPA AND 34 CFR 99.36 IF NECESSARY TO PROTECT
26 THE HEALTH OR SAFETY OF STUDENTS OR OTHER PERSONS.

27 (III) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO
28 DISCLOSES OR FAILS TO DISCLOSE A CONFIDENTIAL COMMUNICATION WITH
29 A CLIENT IN ACCORDANCE WITH THIS PARAGRAPH (d) IS NOT LIABLE FOR
30 DAMAGES IN ANY CIVIL ACTION FOR DISCLOSING OR NOT DISCLOSING THE
31 COMMUNICATION. THIS SUBPARAGRAPH (III) DOES NOT RESCIND ANY
32 STATUTORY DUTY TO WARN AND PROTECT SPECIFIED IN SECTION
33 13-21-117, C.R.S.

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

37 (B) NOTWITHSTANDING SUBSECTION (6) OF THIS SECTION, THIS



1 PARAGRAPH (d) APPLIES TO COVERED ENTITIES, AS DEFINED IN HIPAA.

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

3 (A) "ARTICULABLE AND SIGNIFICANT THREAT" MEANS A THREAT
4 TO THE HEALTH OR SAFETY OF A PERSON THAT, BASED ON THE TOTALITY
5 OF THE CIRCUMSTANCES, CAN BE EXPLAINED OR ARTICULATED AND THAT
6 CONSTITUTES A THREAT OF SUBSTANTIAL BODILY HARM TO A PERSON.

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

9 (C) "HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE
10 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L.
11 104-191.

12 (D) "SCHOOL" MEANS A PUBLIC OR PRIVATE PRESCHOOL;
13 ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL; OR INSTITUTION OF
14 POSTSECONDARY EDUCATION DESCRIBED IN TITLE 23, C.R.S., INCLUDING
15 THE AURARIA HIGHER EDUCATION CENTER CREATED IN ARTICLE 70 OF
16 TITLE 23, C.R.S.

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

21 (B) THIS SUBPARAGRAPH (VI) IS REPEALED IF THE SECRETARY OF
22 THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES GRANTS THE
23 EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE EXECUTIVE
24 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL NOTIFY THE
25 REVISOR OF STATUTES IN WRITING IF THE CONDITION SPECIFIED IN THIS
26 SUB-SUBPARAGRAPH (B) OCCURS.

27 (C) THIS PARAGRAPH (d) IS REPEALED IF THE SECRETARY OF THE
28 FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES DENIES THE
29 REQUEST FOR AN EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE
30 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL
31 NOTIFY THE REVISOR OF STATUTES IN WRITING IF THE CONDITION
32 SPECIFIED IN THIS SUB-SUBPARAGRAPH (C) OCCURS.

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

35 **26-1-140. State exception to HIPAA - significant threat to**
36 **schools - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY
37 HEREBY DECLARES THAT, FOR THE HEALTH AND SAFETY OF COLORADO
38 SCHOOLS AND THEIR STUDENTS, TEACHERS, AND OTHER SCHOOL
39 PERSONNEL, A POLICY ENABLING MENTAL HEALTH PROFESSIONALS AND
40 SCHOOL OFFICIALS TO SHARE APPROPRIATE INFORMATION IN A
41 RESPONSIBLE MANNER IS NECESSARY AND SERVES A COMPELLING NEED

1 RELATED TO PUBLIC HEALTH, SAFETY, AND WELFARE. FURTHERMORE, THE
2 GENERAL ASSEMBLY DECLARES THAT SHARING APPROPRIATE
3 INFORMATION IS WARRANTED WHEN LEGITIMATE PRIVACY CONCERNS ARE
4 OUTWEIGHED BY THE NEED TO PROTECT SCHOOLS AND THEIR STUDENTS
5 AND STAFF.

6 (2) WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
7 SECTION, THE DEPARTMENT OF HUMAN SERVICES SHALL APPLY FOR AN
8 EXCEPTION TO THE PRIVACY RULE UNDER THE FEDERAL "HEALTH
9 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (HIPAA),
10 AS AMENDED, PUB.L. 104-191, IN THE MANNER SPECIFIED IN 45 CFR
11 160.204, TO ALLOW MENTAL HEALTH PROFESSIONALS TO DISCLOSE
12 CONFIDENTIAL COMMUNICATIONS WITH THEIR CLIENTS IN ACCORDANCE
13 WITH SECTION 12-43-218 (2) (d), C.R.S.

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

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

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