

CHAPTER 121

PROFESSIONS AND OCCUPATIONS

HOUSE BILL 17-1183

BY REPRESENTATIVE(S) Foote, Ginal, Michaelson Jenet, Pettersen, Young, Duran;
also SENATOR(S) Gardner, Fields, Jahn, Jones, Kefalas, Kerr, Merrifield, Moreno, Todd, Zenzinger.

AN ACT

CONCERNING THE REPEAL OF THE CONDITION REQUIRED TO BE SATISFIED FOR A PROVISION OF LAW GOVERNING THE DISCLOSURE OF COMMUNICATIONS WITH MENTAL HEALTH PROFESSIONALS TO TAKE EFFECT.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Legislative declaration. (1) The general assembly finds that:

(a) In 2016, the general assembly enacted, and the governor signed into law, House Bill 16-1063, which allows mental health professionals to disclose to school and school district personnel and law enforcement agencies communications with a client if the client makes statements or exhibits behaviors that create an articulable and significant threat against a school or its occupants;

(b) Given concerns that the legislation conflicted with the privacy rule under the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA) and required a waiver from the privacy rule, the effect of the legislation was made contingent on receipt from the secretary of the federal department of health and human services (HHS) of an exception to the HIPAA privacy rule;

(c) As directed by the legislation, in June 2016 the executive director of the department of human services submitted an application to the secretary of HHS for an exception for a provision of state law, House Bill 16-1063, from preemption under federal regulations 45 CFR 164;

(d) By letter dated October 19, 2016, the director of the office for civil rights in the HHS, on behalf of the secretary of HHS, notified the HIPAA privacy and security officer for the department of human services that the office for civil rights determined that the provisions of House Bill 16-1063 regarding disclosure of

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

information for warning of threats to public safety are not contrary to the HIPAA privacy rule and thus do not qualify for an exception;

(e) The letter from the office for civil rights further stated that "Colorado covered entities can comply with House Bill 16-1063 while also complying with the requirements of the Privacy Rule"; and

(f) Since the federal government has determined that the provisions of House Bill 16-1063 do not conflict with the HIPAA privacy rule, the contingency provision in House Bill 16-1063 is no longer necessary and should therefore be repealed.

SECTION 2. In Colorado Revised Statutes, 12-43-218, **repeal** (2)(d)(VI) as follows:

12-43-218. Disclosure of confidential communications - definitions.

(2) Subsection (1) of this section does not apply when:

~~(d) (VI) (A) This paragraph (d) takes effect only if, in accordance with section 26-1-140, C.R.S., the department of human services applies for and is granted an exception to the privacy rule under HIPAA.~~

~~(B) This subparagraph (VI) is repealed if the secretary of the federal department of health and human services grants the exception to the privacy rule under HIPAA. The executive director of the department of human services shall notify the revisor of statutes in writing if the condition specified in this sub-subparagraph (B) occurs.~~

~~(C) This paragraph (d) is repealed if the secretary of the federal department of health and human services denies the request for an exception to the privacy rule under HIPAA. The executive director of the department of human services shall notify the revisor of statutes in writing if the condition specified in this sub-subparagraph (C) occurs.~~

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

Approved: April 6, 2017