

CHAPTER 264

HUMAN SERVICES - BEHAVIORAL HEALTH

HOUSE BILL 24-1217

BY REPRESENTATIVE(S) Amabile and Ricks, Bacon, Brown, Epps, Garcia, Herod, Joseph, Parenti, Rutinel, Willford, Young, McCluskie;
also SENATOR(S) Mullica, Buckner, Cutter, Exum, Michaelson Jenet.

AN ACT

CONCERNING THE DISSEMINATION OF PATIENT HEALTH-CARE INFORMATION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 27-50-101, **add** (11.5), (13.7), and (14.5) as follows:

27-50-101. Definitions. As used in this article 50, unless the context otherwise requires:

(11.5) "COVERED ENTITY" MEANS AN ENTITY SUBJECT TO HIPAA.

(13.7) "FRIENDS AND FAMILY INPUT FORM" MEANS A FORM CREATED PURSUANT TO SECTION 27-50-110 TO ALLOW FAMILY AND FRIENDS TO PROVIDE HEALTH OR BACKGROUND INFORMATION ABOUT AN INDIVIDUAL RECEIVING MENTAL HEALTH OR SUBSTANCE USE SERVICES.

(14.5) "HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996", 42 U.S.C. SECS. 1320d TO 1320d-9, AS AMENDED.

SECTION 2. In Colorado Revised Statutes, **add** 27-50-109 and 27-50-110 as follows:

27-50-109. Centralized digital consent repository working group - duties - report - repeal. (1) THE OFFICE OF E-HEALTH INNOVATION IN THE GOVERNOR'S OFFICE SHALL CONVENE A WORKING GROUP TO EVALUATE THE FEASIBILITY OF CREATING A CENTRALIZED DIGITAL CONSENT REPOSITORY THAT:

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(a) ALLOWS PATIENTS TO PROVIDE, EXTEND, DENY, AND REVOKE CONSENT FOR SHARING THEIR MEDICAL DATA AND INFORMATION BETWEEN PHYSICAL AND BEHAVIORAL HEALTH-CARE PROVIDERS, FAMILY MEMBERS, COMMUNITY ORGANIZATIONS, PAYERS, AND STATE AGENCIES AT ANY TIME;

(b) ENHANCES CARE COORDINATION AMONG PATIENTS, PROVIDERS, AND FAMILY MEMBERS; AND

(c) ENSURES PATIENT DATA IS ACCURATELY RECORDED AND SECURELY STORED.

(2) THE WORKING GROUP SHALL:

(a) REVIEW THE STATE'S EXISTING EFFORTS TO DEVELOP A CENTRALIZED DIGITAL CONSENT REPOSITORY;

(b) DETERMINE THE PROCESS REQUIRED TO ESTABLISH A CENTRALIZED DIGITAL CONSENT REPOSITORY;

(c) EVALUATE THE POTENTIAL COST OF IMPLEMENTING A CENTRALIZED DIGITAL CONSENT REPOSITORY;

(d) IDENTIFY THE INFRASTRUCTURE NEEDED TO ESTABLISH A CENTRALIZED DIGITAL CONSENT REPOSITORY;

(e) IDENTIFY BEST PRACTICES FOR PROTECTING PATIENT DATA;

(f) IDENTIFY SOLUTIONS FOR THE SECURE STORAGE OF DATA AND FOR PATIENT AND PROVIDER ACCESS TO THE DATA;

(g) DISCUSS THE ROLE OF THE CENTRALIZED DIGITAL CONSENT REPOSITORY IN CRISIS SITUATIONS AND HOW TO ENSURE EMERGENT INFORMATION IS COMMUNICATED IN A TIMELY MANNER BETWEEN A PATIENT, A PROVIDER OR FACILITY, AND OTHER AUTHORIZED PERSONS;

(h) ENGAGE WITH THE DEPARTMENT OF REGULATORY AGENCIES REGARDING IMPLEMENTATION OF THE RELEASE FORMS; AND

(i) MAKE RECOMMENDATIONS ON ANY OTHER TOPICS THE WORKING GROUP DEEMS RELEVANT.

(3) THE WORKING GROUP MAY CONSULT WITH ADDITIONAL STAKEHOLDERS AND EXPERTS AS NEEDED TO INFORM THE WORKING GROUP'S DISCUSSIONS AND TO ANSWER QUESTIONS TO ASSIST THE WORKING GROUP IN FINALIZING ITS FINDINGS AND RECOMMENDATIONS.

(4) THE WORKING GROUP MUST INCLUDE INDIVIDUALS WITH LEGAL EXPERTISE REGARDING 42 CFR 2, OR SUCCESSOR FEDERAL REGULATIONS, AND HIPAA; A REPRESENTATIVE FROM THE BHA; A REPRESENTATIVE OF A HEALTH INFORMATION ORGANIZATION NETWORK; A REPRESENTATIVE OF A HOSPITAL; LICENSED BEHAVIORAL HEALTH PROVIDERS, INCLUDING BEHAVIORAL HEALTH SAFETY NET

PROVIDERS; SUBSTANCE USE PROVIDERS; REPRESENTATIVES OF CONSUMER ADVOCACY ORGANIZATIONS; REPRESENTATIVES OF DISABILITY ADVOCACY ORGANIZATIONS; AND ANY OTHER INDIVIDUALS THAT THE OFFICE OF E-HEALTH INNOVATION DETERMINES ARE NECESSARY.

(5) BEGINNING SEPTEMBER 1, 2024, THE WORKING GROUP SHALL MEET AT LEAST ONCE IN EACH QUARTER OF THE CALENDAR YEAR TO DEVELOP THE REPORT CREATED PURSUANT TO SUBSECTION (6) OF THIS SECTION.

(6) (a) ON OR BEFORE JANUARY 1, 2026, THE WORKING GROUP SHALL SUBMIT A REPORT INCLUDING RECOMMENDATIONS REGARDING THE FEASIBILITY OF CREATING A CENTRALIZED DIGITAL CONSENT REPOSITORY TO THE HOUSE OF REPRESENTATIVES HEALTH AND HUMAN SERVICES COMMITTEE, THE SENATE HEALTH AND HUMAN SERVICES COMMITTEE, AND THE JOINT TECHNOLOGY COMMITTEE, OR THEIR SUCCESSOR COMMITTEES.

(b) THE OFFICE OF E-HEALTH INNOVATION SHALL MAKE THE REPORT AVAILABLE TO THE PUBLIC ON THE OFFICE'S WEBSITE.

(7) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2026.

27-50-110. Friends and family input form - rules - definition. (1) (a) ON OR BEFORE JULY 1, 2025, THE BHA SHALL CREATE A FRIENDS AND FAMILY INPUT FORM TO ALLOW AN INDIVIDUAL TO PROVIDE A TREATING PROFESSIONAL OR A LICENSED OR DESIGNATED FACILITY OR ORGANIZATION WITH INFORMATION RELATED TO A PATIENT RECEIVING MENTAL HEALTH OR SUBSTANCE USE SERVICES, INCLUDING:

(I) INFORMATION ABOUT A PATIENT'S:

(A) DIAGNOSIS;

(B) PAST HOSPITALIZATIONS;

(C) DE-ESCALATION TECHNIQUES;

(D) CURRENT AND PAST PROVIDERS AND THEIR CONTACT INFORMATION;

(E) POTENTIAL TRIGGERS;

(F) HOUSING STATUS;

(G) FAMILY HISTORY, RELATIONSHIPS, OR SOCIAL CONTEXT;

(H) CURRENT MEDICAL CONDITIONS; AND

(I) CURRENT AND PAST MEDICATIONS; AND

(II) ANY OTHER INFORMATION AS DETERMINED BY THE BHA BASED ON FEEDBACK RECEIVED FROM STAKEHOLDERS.

(b) THE FRIENDS AND FAMILY INPUT FORM MUST INCLUDE A CLEAR STATEMENT

THAT THE FRIENDS AND FAMILY INPUT FORM MAY BECOME PART OF THE PATIENT'S MEDICAL RECORD.

(2) ON OR BEFORE OCTOBER 1, 2024, THE BHA SHALL CONVENE ONE OR MORE MEETINGS TO OBTAIN INPUT AND RECOMMENDATIONS FROM STAKEHOLDERS, INCLUDING CONSUMER ADVOCATES; BEHAVIORAL HEALTH PROVIDERS, INCLUDING BEHAVIORAL HEALTH SAFETY NET PROVIDERS; REPRESENTATIVES FROM THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT AND THE DEPARTMENT OF CORRECTIONS; INDIVIDUALS WITH EXPERTISE IN STATE AND FEDERAL PRIVACY LAW; AND INDIVIDUALS WHO HAVE ACCESSED MENTAL HEALTH OR SUBSTANCE USE SERVICES, CONCERNING THE BEST PRACTICES FOR CREATION AND USE OF THE FRIENDS AND FAMILY INPUT FORM DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(3) (a) THE FRIENDS AND FAMILY INPUT FORM MAY BE ACCEPTED IN WRITING OR ELECTRONICALLY BY ANY HEALTH-CARE FACILITY OR PROVIDER LICENSED OR DESIGNATED BY THE BHA, ANY LICENSEE AS DEFINED IN SECTION 12-245-202 (8), ANY REGISTRANT AS DEFINED IN SECTION 12-245-202 (16), THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT, THE DEPARTMENT OF CORRECTIONS, A COUNTY OR DISTRICT PUBLIC HEALTH AGENCY, THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING, OR ANY OTHER TREATMENT FACILITY FOR INDIVIDUALS WITH BEHAVIORAL OR MENTAL HEALTH DISORDERS.

(b) COVERED ENTITIES MAY ACCEPT PARTIALLY COMPLETED SUBMISSIONS OF THE FRIENDS AND FAMILY INPUT FORM.

(c) A TREATING PROFESSIONAL OR A LICENSED OR DESIGNATED FACILITY OR ORGANIZATION SHALL NOT DISTRIBUTE THE FRIENDS AND FAMILY INPUT FORM TO ANY OTHER ENTITY IF A PATIENT EXPRESSLY PROHIBITS DISCLOSURE, EXCEPT IF A COURT OR OTHER LEGAL AUTHORITY HAS ORDERED THE DISCLOSURE.

(d) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO MODIFY OR ALTER ANY GENERALLY ACCEPTED ETHICS, STANDARDS, PROTOCOLS, OR LAWS GOVERNING TREATING PROFESSIONALS. A COVERED ENTITY, TREATING PROFESSIONAL, OR THE PROFESSIONAL'S DESIGNEE IS NOT SUBJECT TO ANY CIVIL, CRIMINAL, OR REGULATORY SANCTION FOR ACTING OR FAILING TO ACT IN RESPONSE TO THE INFORMATION CONTAINED IN THE FRIENDS AND FAMILY INPUT FORM OR FOR DECLINING TO ACCEPT A FRIENDS AND FAMILY INPUT FORM.

(e) IF A PATIENT EXPLICITLY OBJECTS TO A COVERED ENTITY RECEIVING INFORMATION REGARDING THE PATIENT FROM A SPECIFIC INDIVIDUAL, THE COVERED ENTITY IS NOT REQUIRED TO ACCEPT INFORMATION FROM THE SPECIFIC INDIVIDUAL.

(4) A FRIEND OR FAMILY MEMBER PROVIDING INFORMATION ABOUT AN INDIVIDUAL SHALL ENSURE THE INFORMATION IS ACCURATE TO THE BEST KNOWLEDGE OF THE FRIEND OR FAMILY MEMBER PROVIDING THE INFORMATION.

(5) (a) AN INDIVIDUAL WITH A CLOSE, PERSONAL INTEREST IN THE WELL-BEING OF THE PATIENT MAY PROVIDE INFORMATION PURSUANT TO THIS SUBSECTION (5).

(b) A TREATING PROFESSIONAL OR A LICENSED OR DESIGNATED FACILITY OR

ORGANIZATION MAY ACCEPT INPUT IN WRITING OR THROUGH E-MAIL FROM ANOTHER INDIVIDUAL.

(c) A TREATING PROFESSIONAL OR A LICENSED OR DESIGNATED FACILITY OR ORGANIZATION MAY ACCEPT INPUT VERBALLY, INCLUDING THROUGH VOICEMAIL. IF A TREATING PROFESSIONAL OR A LICENSED OR DESIGNATED FACILITY OR ORGANIZATION ACCEPTS INPUT VERBALLY, THE TREATING PROFESSIONAL OR LICENSED OR DESIGNATED FACILITY OR ORGANIZATION SHALL ESTABLISH AND DOCUMENT THE PROCESS FOR ACCEPTING VERBAL INPUT.

(d) THE PROVIDER SHALL ACKNOWLEDGE RECEIPT OF THE INPUT PROVIDED PURSUANT TO THIS SUBSECTION (5) BUT IS NOT REQUIRED TO DISCLOSE ADDITIONAL INFORMATION.

(6)(a) IF THE DISCLOSURES ARE PERMITTED BY HIPAA, A PROVIDER MAY SHARE A PATIENT'S INFORMATION WITH FAMILY, FRIENDS, OR ANY INDIVIDUAL WITH A CLOSE, PERSONAL INTEREST IN THE WELL-BEING OF THE PATIENT WITHOUT THE PATIENT'S CONSENT IF THE PATIENT IS NOT PRESENT OR IS INCAPACITATED AND THE TREATING PROFESSIONAL OR THE PROFESSIONAL'S DESIGNEE DETERMINES, BASED ON PROFESSIONAL JUDGMENT, THAT IT IS IN THE BEST INTEREST OF THE PATIENT.

(b) IF A PROVIDER DISCLOSES INFORMATION ABOUT A PATIENT WITHOUT THE PATIENT'S CONSENT PURSUANT TO SUBSECTION (6)(a) OF THIS SECTION, THE PROVIDER SHALL DISCUSS ONLY THE INFORMATION THAT AN INDIVIDUAL INVOLVED NEEDS TO KNOW ABOUT A PATIENT'S CARE OR PAYMENT.

(c) A PROVIDER OR FACILITY SHALL NOT INFORM A PATIENT'S FAMILY, FRIENDS, OR ANY INDIVIDUAL WITH A CLOSE, PERSONAL INTEREST IN THE WELL-BEING OF THE PATIENT ABOUT A PAST MEDICAL PROBLEM THAT IS UNRELATED TO THE PATIENT'S CURRENT CONDITION.

(d) A PROVIDER IS NOT REQUIRED BY HIPAA TO SHARE A PATIENT'S INFORMATION WHEN THE PATIENT IS NOT PRESENT OR IS INCAPACITATED. THE PROVIDER MAY WAIT UNTIL THE PATIENT HAS THE OPPORTUNITY TO AGREE TO THE DISCLOSURE.

(7) THE BHA SHALL CREATE A RESOURCE PAGE FOR BOTH PROVIDERS AND FAMILIES ON ITS WEBSITE THAT INCLUDES THE FRIENDS AND FAMILY INPUT FORM AND INFORMATION FROM FEDERAL GUIDANCE DOCUMENTS AND SHALL NOTIFY INTERESTED STAKEHOLDERS OF THE AVAILABILITY OF THE FRIENDS AND FAMILY INPUT FORM AND RESOURCE PAGE.

(8) THE BHA SHALL PROMULGATE RULES FOR BEHAVIORAL HEALTH SAFETY NET PROVIDERS RELATED TO MAINTAINING AND RELEASING PATIENT INFORMATION AND IMPLEMENTING THE FRIENDS AND FAMILY INPUT FORM.

SECTION 3. Appropriation. (1) For the 2024-25 state fiscal year, \$50,604 is appropriated to the department of human services. This appropriation is from the general fund. To implement this act, the department may use this appropriation as follows:

(a) \$18,599 for use by the behavioral health administration for behavioral health

consent forms related to integrated behavioral health services, which amount is based on an assumption that the administration will require an additional 0.2 FTE; and

(b) \$32,005 for the purchase of legal services.

(2) For the 2024-25 state fiscal year, \$32,005 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of human services under subsection (1)(b) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of human services.

SECTION 4. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: May 28, 2024