

## **SSB 5807: Improving behavioral health outcomes by enhancing engagement of state hospitals.**

**The Washington Association of Criminal Defense Lawyers and Washington Defender Association have concerns about SSB 5807 as contact with family members without the patient's established consent violates the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and may cause significant issue for the patient.** WACDL/WDA would support the bill in its entirety if contact with family members was limited to instances in which the patient consented to the contact. A legislative finding that a statute does not violate privacy laws does not protect the designated DSHS facilities from suit when the statute as written does in fact violate privacy laws.

**As currently written, SSB 5807 violates HIPAA and puts Washington in a dangerous position.** Not every person with mental health issues has a loving and supporting family who want additional tools in assisting the family member. Not every person who is detained in a hospital wants their family to know about their continued struggles. Mental illness continues to be stigmatized and many want their private health issues to remain private. Nothing will be more telling about a person's current whereabouts or issues than having an employee of DSHS or of the UW REACH program initiating contact.

**This bill must clarify that family engagement can only be initiated with the consent of the patient.** This bill does not provide for disclosure being made on the patient's terms and eliminates basic independence for the patient. Eliminating ability to have some control over the patient's own life may have a detrimental impact on a patient's treatment. Simply put this bill strips away some of the rights that a patient currently has and the should not This program eliminates rights that the patient currently has.

**To be most effective for patients and family members, and to eliminate lawsuits regarding violation HIPAA, Sec 1 of this bill must should be amended in the following manner:**

(2) The bureau shall establish contact with at least one family member or natural support after receiving patient consent and provide them with systems navigation information, education, and training, ~~to include the following:~~ If a patient is unable to provide consent and is involuntarily detained, the court shall appoint a guardian ad litem to assist with determining if the patient would consent. The information, education and training shall include the following: . . . .

(3) The bureau shall comply with state and federal privacy laws when contacting a patient's family or natural supports to offer the services described in subsection (2) of this section. The legislature finds that disclosure of the following does not violate privacy laws:

~~(a) The fact that the person contacted has been identified as a person who may benefit from the information, education, or training provided under subsection (2) of this section;~~

(b) Relevant patient health information under circumstances authorized under RCW 70.02.205;

(c) Relevant patient health information to persons the patient has involved in their health care with the patient's verbal agreement, or written consent, ~~or lack of objection which can be reasonably inferred from the circumstances;~~

(d) Relevant health information if the patient does not have capacity ~~and based on professional judgment that disclosure to the patient's family or natural supports is in the best interest of the patient~~ and a committing court has made determination after appointment of a guardian ad litem that such disclosure to the patient's family or natural supports would be disclosed if the patient had such capacities to consent:

(e) A guardianship has been established and such disclosure is authorized by that guardianship; or

~~(e)~~-(f) Matters contained in the public record.

**To lower the costs of hospital level of care this act must specify that it can be used for willing patients who are committed to DSHS facilities pursuant to findings of insanity.**

Those committed to the hospital pursuant to RCW 71.05 should not have more opportunity than those committed pursuant to a finding of insanity under RCW 71.05. The daily costs of hospital level of care for those in DSHS facilities is high. Many patients are unable to be discharged because of lack of community support: this includes those patients committed to the state hospitals pursuant to findings of not guilty by reason of insanity. Additionally, it appears that the intent is to make this bill applicable to children committed pursuant to RCW 71.34, but no reference is made to that statute.

**To provide equal opportunity and reduce costs of hospital care for NGRI patients, Sec 3 should be amended as follows:**

(6) "Person with mental illness" means any person who, pursuant to the definitions contained in RCW 71.05.020 and RCW 71.34.020 as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled. Person with mental illness also means any pursuant to who is committed to a state hospital pursuant to a finding of insanity pursuant to RCW 10.77.

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