

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 17-0824.01 Christy Chase x2008

HOUSE BILL 17-1183

HOUSE SPONSORSHIP

Foote,

SENATE SPONSORSHIP

Gardner,

House Committees
Education

Senate Committees
Judiciary

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

In 2016, the general assembly enacted House Bill 16-1063, which allows mental health professionals to disclose to school and school district personnel and law enforcement agencies communications with a

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
March 28, 2017

SENATE
2nd Reading Unamended
March 27, 2017

HOUSE
3rd Reading Unamended
March 7, 2017

HOUSE
2nd Reading Unamended
March 6, 2017

client if the client makes statements or exhibits behaviors that create an articulable and significant threat against a school or its occupants. The effect of the legislation was contingent on receipt from the secretary of the federal department of health and human services (HHS) of an exception to the privacy rule under the federal "Health Insurance Portability and Accountability Act of 1996" (HIPAA).

The state received notice from HHS that the legislation is not contrary to the HIPAA privacy rule and therefore does not qualify for an exception. Accordingly, the bill repeals the contingency provision.

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

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

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

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

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

20 (d) By letter dated October 19, 2016, the director of the office for

1 civil rights in the HHS, on behalf of the secretary of HHS, notified the
2 HIPAA privacy and security officer for the department of human services
3 that the office for civil rights determined that the provisions of House Bill
4 16-1063 regarding disclosure of information for warning of threats to
5 public safety are not contrary to the HIPAA privacy rule and thus do not
6 qualify for an exception;

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

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

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

16 **12-43-218. Disclosure of confidential communications -**
17 **definitions.** (2) Subsection (1) of this section does not apply when:

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

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

26 ~~(C) This paragraph (d) is repealed if the secretary of the federal~~
27 ~~department of health and human services denies the request for an~~

1 ~~exception to the privacy rule under HHPAA. The executive director of the~~
2 ~~department of human services shall notify the revisor of statutes in~~
3 ~~writing if the condition specified in this sub-subparagraph (C) occurs.~~

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