

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

REREVISED

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

LLS NO. 16-0513.01 Christy Chase x2008

HOUSE BILL 16-1063

HOUSE SPONSORSHIP

Foote and Duran,

SENATE SPONSORSHIP

Scheffel and Cadman,

House Committees
Judiciary

Senate Committees
Health & Human Services

A BILL FOR AN ACT

101 **CONCERNING AN EXCEPTION TO THE PROHIBITION AGAINST**
102 **DISCLOSING CONFIDENTIAL COMMUNICATIONS WITH A MENTAL**
103 **HEALTH PROFESSIONAL WHEN SCHOOL SAFETY IS AT RISK.**

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://www.leg.state.co.us/billsummaries>.)

Except under limited circumstances, current law prohibits a licensed, registered, or certified mental health professional from disclosing, without the client's consent, confidential communications made by, or advice given to, the client in the course of the professional relationship.

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
April 6, 2016

SENATE
2nd Reading Unamended
April 5, 2016

HOUSE
3rd Reading Unamended
February 23, 2016

HOUSE
Amended 2nd Reading
February 16, 2016

The bill grants an exception to the prohibition against disclosure when the mental health professional's client either:

- ! Makes a direct threat against a school or its occupants; or
- ! Exhibits behavior that, in the mental health professional's reasonable judgment, creates a dangerous environment in a school that may jeopardize the safety or well being of students, faculty, staff, parents, or the general public.

The mental health professional must limit the disclosure to appropriate school district personnel and maintain confidentiality of the disclosure.

A mental health professional is not liable for disclosing or failing to disclose a confidential communication, except to the extent the mental health professional has a duty under current law to warn and protect.

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

2 **SECTION 1.** In Colorado Revised Statutes, 12-43-218, **add** (2)

3 (d) as follows:

4 **12-43-218. Disclosure of confidential communications -**
5 **definition - repeal.** (2) Subsection (1) of this section does not apply
6 when:

7 (d) (I) A CLIENT, REGARDLESS OF AGE:

8 (A) MAKES AN ARTICULABLE AND SIGNIFICANT THREAT AGAINST
9 A SCHOOL OR THE OCCUPANTS OF A SCHOOL; OR

10 (B) EXHIBITS BEHAVIORS THAT, IN THE REASONABLE JUDGMENT
11 OF THE LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER, CREATE AN
12 ARTICULABLE AND SIGNIFICANT THREAT TO THE HEALTH OR SAFETY OF
13 STUDENTS, TEACHERS, ADMINISTRATORS, OR OTHER SCHOOL PERSONNEL.

14 (II) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO
15 DISCLOSES INFORMATION UNDER THIS PARAGRAPH (d) SHALL LIMIT THE
16 DISCLOSURE TO APPROPRIATE SCHOOL OR SCHOOL DISTRICT PERSONNEL
17 AND LAW ENFORCEMENT AGENCIES. SCHOOL OR SCHOOL DISTRICT
18 PERSONNEL TO WHOM THE INFORMATION IS DISCLOSED SHALL MAINTAIN

1 CONFIDENTIALITY OF THE DISCLOSED INFORMATION, REGARDLESS OF
2 WHETHER THE INFORMATION CONSTITUTES AN EDUCATION RECORD
3 SUBJECT TO FERPA, CONSISTENT WITH THE REQUIREMENTS OF FERPA
4 AND REGULATIONS AND APPLICABLE GUIDELINES ADOPTED UNDER
5 FERPA, BUT MAY DISCLOSE INFORMATION IN ACCORDANCE WITH SECTION
6 1232g (b) (1) OF FERPA AND 34 CFR 99.36 IF NECESSARY TO PROTECT
7 THE HEALTH OR SAFETY OF STUDENTS OR OTHER PERSONS.

8 (III) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO
9 DISCLOSES OR FAILS TO DISCLOSE A CONFIDENTIAL COMMUNICATION WITH
10 A CLIENT IN ACCORDANCE WITH THIS PARAGRAPH (d) IS NOT LIABLE FOR
11 DAMAGES IN ANY CIVIL ACTION FOR DISCLOSING OR NOT DISCLOSING THE
12 COMMUNICATION. THIS SUBPARAGRAPH (III) DOES NOT RESCIND ANY
13 STATUTORY DUTY TO WARN AND PROTECT SPECIFIED IN, AND DOES NOT
14 ELIMINATE ANY POTENTIAL CIVIL LIABILITY FOR FAILURE TO COMPLY
15 WITH, SECTION 13-21-117, C.R.S.

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

19 (B) NOTWITHSTANDING SUBSECTION (6) OF THIS SECTION, THIS
20 PARAGRAPH (d) APPLIES TO COVERED ENTITIES, AS DEFINED IN HIPAA.

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

22 (A) "ARTICULABLE AND SIGNIFICANT THREAT" MEANS A THREAT
23 TO THE HEALTH OR SAFETY OF A PERSON THAT, BASED ON THE TOTALITY
24 OF THE CIRCUMSTANCES, CAN BE EXPLAINED OR ARTICULATED AND THAT
25 CONSTITUTES A THREAT OF SUBSTANTIAL BODILY HARM TO A PERSON.

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

1 (C) "HIPAA" MEANS THE FEDERAL "HEALTH INSURANCE
2 PORTABILITY AND ACCOUNTABILITY ACT OF 1996", AS AMENDED, PUB.L.
3 104-191.

4 (D) "SCHOOL" MEANS A PUBLIC OR PRIVATE PRESCHOOL;
5 ELEMENTARY, MIDDLE, JUNIOR HIGH, OR HIGH SCHOOL; OR INSTITUTION OF
6 POSTSECONDARY EDUCATION DESCRIBED IN TITLE 23, C.R.S., INCLUDING
7 THE AURARIA HIGHER EDUCATION CENTER CREATED IN ARTICLE 70 OF
8 TITLE 23, C.R.S.

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

13 (B) THIS SUBPARAGRAPH (VI) IS REPEALED IF THE SECRETARY OF
14 THE FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES GRANTS THE
15 EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE EXECUTIVE
16 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL NOTIFY THE
17 REVISOR OF STATUTES IN WRITING IF THE CONDITION SPECIFIED IN THIS
18 SUB-SUBPARAGRAPH (B) OCCURS.

19 (C) THIS PARAGRAPH (d) IS REPEALED IF THE SECRETARY OF THE
20 FEDERAL DEPARTMENT OF HEALTH AND HUMAN SERVICES DENIES THE
21 REQUEST FOR AN EXCEPTION TO THE PRIVACY RULE UNDER HIPAA. THE
22 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES SHALL
23 NOTIFY THE REVISOR OF STATUTES IN WRITING IF THE CONDITION
24 SPECIFIED IN THIS SUB-SUBPARAGRAPH (C) OCCURS.

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

27 **26-1-140. State exception to HIPAA - significant threat to**

1 **schools - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY
2 HEREBY DECLARES THAT, FOR THE HEALTH AND SAFETY OF COLORADO
3 SCHOOLS AND THEIR STUDENTS, TEACHERS, AND OTHER SCHOOL
4 PERSONNEL, A POLICY ENABLING MENTAL HEALTH PROFESSIONALS AND
5 SCHOOL OFFICIALS TO SHARE APPROPRIATE INFORMATION IN A
6 RESPONSIBLE MANNER IS NECESSARY AND SERVES A COMPELLING NEED
7 RELATED TO PUBLIC HEALTH, SAFETY, AND WELFARE. FURTHERMORE, THE
8 GENERAL ASSEMBLY DECLARES THAT SHARING APPROPRIATE
9 INFORMATION IS WARRANTED WHEN LEGITIMATE PRIVACY CONCERNS ARE
10 OUTWEIGHED BY THE NEED TO PROTECT SCHOOLS AND THEIR STUDENTS
11 AND STAFF.

12 (2) WITHIN THIRTY DAYS AFTER THE EFFECTIVE DATE OF THIS
13 SECTION, THE DEPARTMENT OF HUMAN SERVICES SHALL APPLY FOR AN
14 EXCEPTION TO THE PRIVACY RULE UNDER THE FEDERAL "HEALTH
15 INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996" (HIPAA),
16 AS AMENDED, PUB.L. 104-191, IN THE MANNER SPECIFIED IN 45 CFR
17 160.204, TO ALLOW MENTAL HEALTH PROFESSIONALS TO DISCLOSE
18 CONFIDENTIAL COMMUNICATIONS WITH THEIR CLIENTS IN ACCORDANCE
19 WITH SECTION 12-43-218 (2) (d), C.R.S.

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

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