



128 DORRANCE STREET, SUITE 400
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org | info@riaclu.org

**TESTIMONY IN OPPOSITION, IN PART, TO 18-S 2545 SUB A/2,
RELATING TO INSURANCE COVERAGE FOR MENTAL ILLNESS
May 31, 2018**

While we appreciate the intent behind this legislation, the ACLU of Rhode Island opposes Section 1 of the bill, which would add a new exemption to the already-long list of exemptions in the Health Care Confidentiality Act that allow for the disclosure of medical information without a patient's consent. This new exemption would allow disclosure under broadly defined emergency circumstances that we believe infringe on patients' rights and undermine the physician-patient relationship.

We recognize that this new language largely follows an exemption contained in HIPAA, but HIPAA sets a floor for confidentiality, not a ceiling. The state should not add to the breaches of confidentiality that are allowable under the law merely because HIPAA allows it.

Addressing the merits of the bill, this new exemption would give doctors virtually unbridled authority to notify family members (or other close friends who may not be aware of their addiction) of a person's addicted status if they have overdosed. In just about any such situation, a doctor could plausibly argue that the notification is necessary to "lessen" a "serious" threat to the person, and family members (or other close friends) are the ones most "reasonably able" to do that. That is all this new language requires.

It would apply in situations where the patient is competent to decide for themselves whether they wish this private information disclosed to others. This broad exemption not only undermines a patient's agency and the key principle of patient-doctor confidentiality, it may create situations that only imperil or exacerbate family dynamics. Further, once this exemption is popularized and known to be used, it could discourage some individuals with addictions from going to the emergency room for fear of having their medical situation disclosed to people they do not want to know about it.

We believe this language is problematic for another reason. Although written broadly, we recognize this exemption is being proposed specifically to address situations involving drug overdoses. But federal law contains additional confidentiality safeguards for medical records relating to substance use disorders. See 42 CFR Part 2. Federal regulations make clear that this "emergency exemption" does not supersede those special confidentiality exemptions for substance abuse records in any covered entity.

This legislation appears to reference that fact in only the most oblique way, by allowing disclosure of medical information in these situations only when "consistent with applicable law." But the bill doesn't explain what that term means or refers to. It's unclear to us how medical personnel are supposed to know whether disclosure allowed by this new language is

otherwise “consistent with applicable law,” including the CFR regulations. In many instances, particularly in the case of drug overdoses, disclosure may not be allowable at all under those regulations - both severely limiting the purpose of this proposal while creating real opportunities for unintentional violations of confidentiality by medical personnel.

For all these reasons, the ACLU urges the deletion of Section 1. As we noted at the beginning, we fully appreciate the good intentions behind it, but we also believe it could do more harm than good.