Washington State Hospital Association

Understanding the Adolescent Behavioral Health Care Access Act (E2SHB 1874)

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Today's presenters

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Overview

- Overview of applicable laws, including background on E2SHB 1874
- Review all hospitals' notice obligations about adolescent behavioral health care services
- Discuss changes under E2SHB HB 1874:
  - Adolescent initiated treatment
  - Family initiated treatment
  - The expanded definition of "parent"
  - Sharing treatment information and records with family members and guardians

Overview of Existing Laws & Background on HB 1874

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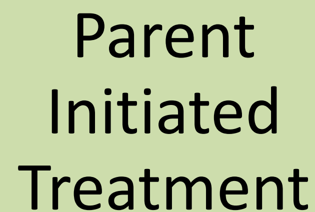
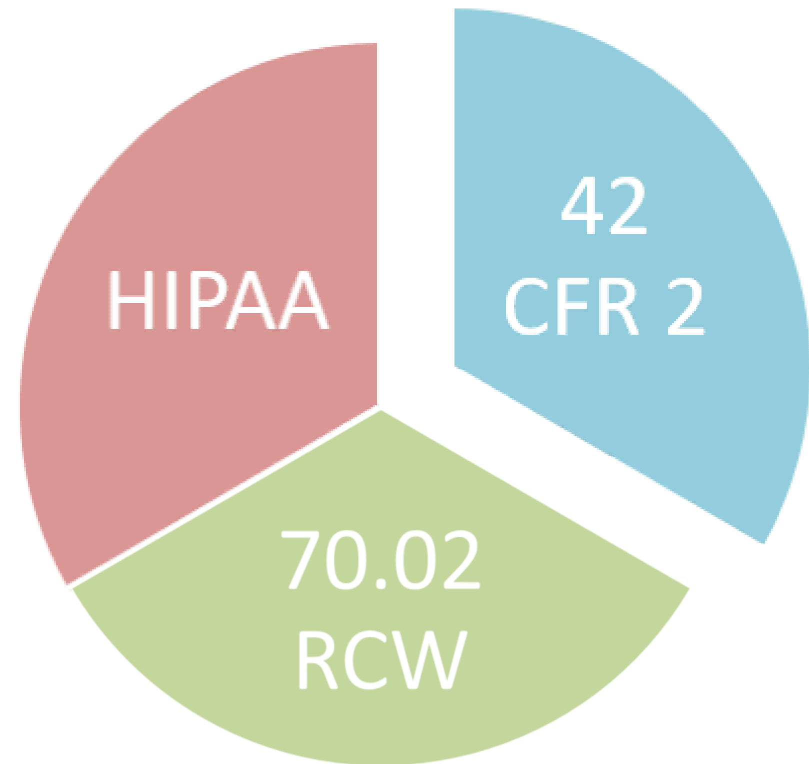
Mental Health Services for Minors (71.34 RCW)



Age of consent: minors aged 13+ can consent to behavioral health services without the consent of their parent or guardian

Adolescents' Privacy & Confidentiality

- **70.02 RCW:** minors' mental health information is confidential, but may be disclosed to parents without authorization**
- **HIPAA:** defers to state law (70.02) about the release of a minor's personal health information to a parent
- **42 CFR 2:** does NOT defer to state law; requires the minor's written consent to disclose SUD treatment information or records



***Notwithstanding the law, there was significant confusion around providers' authority to disclose information to parents without the minor's consent and information was rarely shared with them.*

HB 2779 (2018): DSHS convenes PIT workgroup

The Parent Initiated Treatment Stakeholder Advisory Group (PIT) was charged with reviewing the PIT process and developing recommendations for improvement.

Stakeholders include **parents, youth, providers and hospitals.**

Recommendations included:

- Maintain the age of consent at 13
- Increase options for parental involvement in an adolescent's treatment
- Facilitate information sharing between families and providers under PIT
- Expand the list of decision makers authorized to make treatment decisions on behalf of the minor

HB 1874: Adolescent Behavioral Health Care Access Act

Objective: increase access to behavioral health services for adolescents, aged 13-17

HB 1874:

- ✓Amended minor initiated treatment
- ✓Expanded parent initiated treatment
- ✓Refined providers' notice obligations
- ✓Clarified providers' authority and discretion to share information with family members and caretakers.

Notice obligations under 71.34 RCW

Why this presentation matters for all hospitals

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Notice obligations on all hospitals

RCW 71.34.375

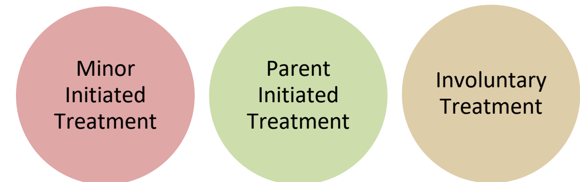
Hospitals must promptly provide verbal **and** written notice of all statutorily available treatment options

- **Regardless** of whether a hospital offers adolescent behavioral health services

Verbal notice: discuss all available treatment options under 71.34 RCW with the family member or guardian

The written notice must contain:

1. All statutorily available treatment options
2. The processes involved in utilizing each of the treatment options



WSHA Recommends a Signed Acknowledgment: Have the family member or guardian sign an acknowledgement that he or she received both written and verbal notice. Include it in patient chart.

Additional resources:

- HCA developed a model form
- WSHA prepared a bulletin

Adolescent initiated treatment

Formerly "minor initiated treatment"

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Adolescent initiated treatment

Existing law

RCW 71.34.500

- Adolescents: minors aged 13-17
- May admit themselves to an evaluation and treatment (E&T) facility or approved SUD program without parental consent
- Admission only if:
  - Facility provides the type of evaluation and treatment needed
  - Less restrictive alternative not appropriate
  - Not feasible in adolescent's home

Note: for minors under 13, parental authorization or authorization from authorized person under 7.70.065 required

Notifying parents of adolescent’s admission

RCW 71.34.510

For admission involving solely mental health treatment	For admissions involving substance use disorder treatment, including co-occurring disorder
E&T must provide notice to parent of adolescent’s admission • <u>unless</u> there is a compelling reason to believe disclosure would be detrimental <u>or</u> contact cannot be made*	Facility may only provide notice to the parent of adolescent’s admission if: • adolescent provides written consent, or • permitted by federal law, 42 CFR 2

2 key points about notice:

1. Must be in a form most likely to reach a parent within 24 hours of admission
2. Efforts must begin as soon as reasonably practicable considering the adolescent’s immediate medical needs

Notice for solely mental health treatment cont'd:

If notice is withheld or contact cannot be made:

1. Consult the Washington state patrol's missing children webpage

- At least once every 8 hours for the first 72 hours and
- Once every 24 hours thereafter

2. If the child is listed as missing, immediately notify the Department of Children, Youth and Families.

- Notice must include a description of the adolescent's physical and emotional condition

Family initiated treatment

Formerly "parent initiated treatment"

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Family initiated treatment (FIT)

Existing law

RCW 71.34.600 – 71.34.650

- A "parent" may seek evaluation and treatment of his or her adolescent without the adolescent's consent, across the continuum of care:
  - Inpatient
  - Outpatient
  - Intensive outpatient treatment
  - Partial hospitalization NEW!

Inpatient services include those at a free standing psychiatric hospital, general acute general hospital, or state psychiatric hospital.

Also includes secure detox facility or approved SUD treatment program.

FIT cont'd:

Existing law

3 more key points about FIT:

1. There is no obligation to treat an adolescent under FIT
2. But the fact that the adolescent has not consented to treatment may not be the sole basis for refusing
3. Medical necessity is required for admission

Medical necessity means:
(a) "a service reasonably calculated to diagnose, correct, cure or alleviate a mental disorder or SUD or (b) prevent the progression of SUD that endangers life or causes suffering and pain, or results in illness or infirmity or threatens to aggravate a handicap, or causes physical deformity or malfunction, and there is no adequate less restrictive alternative"

Remember: even if your hospital does not provide adolescent behavioral health services, you need to notify parents verbally and in writing of all statutorily available treatment options.

The (new) Definition of "Parent"

What's in a name?

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The new definition of “parent”

“Parent” means: **RCW 71.34.020(25)(a)**

- Either parent if custody is shared under joint custody
- A person or agency judicially appointed as legal guardian or custodian
- Anyone who satisfies the definition under **Washington’s Uniform Parentage Act (26.26A.010 RCW),** which is an individual who has established a parent-child relationship under RCW 26.26A.101

It takes a village…

For purposes of FIT, Parent **also** includes:

- **A person to whom a parent has given a signed authorization** to make health care decisions for the adolescent
- **A stepparent** involved in caring for the adolescent
- **A kinship caregiver** involved in caring for the adolescent
- **Another relative** who is responsible for the health care of the adolescent

Questions about “parents”

1. What is a kinship caregiver?

Answer: As defined under RCW 74.13.031(19)(a), generally refers to a person 18+ who is related by blood, adoption, or marriage; or for Native American children, an “extended family member”

2. Is there any way to verify a family member is who they say?

Answer: A family member may be required to provide a declaration under penalty of perjury stating that he or she is a relative responsible for the health care of the adolescent.

3. What happens if two “parents” disagree about an adolescent’s health care under FIT?

Answer: The disagreement must be resolved according to the priority established Washington’s surrogate decision makers statute, RCW 7.70.065(2)(a)

WSHA recommends:
consult legal counsel if:

1. There is a question about a family member’s authority
2. There is a dispute between two “parents”

Adolescents’ Privacy & Sharing Treatment Information

*Hint: Parents have rights, too**

* For some information, sometimes, depending on the circumstances

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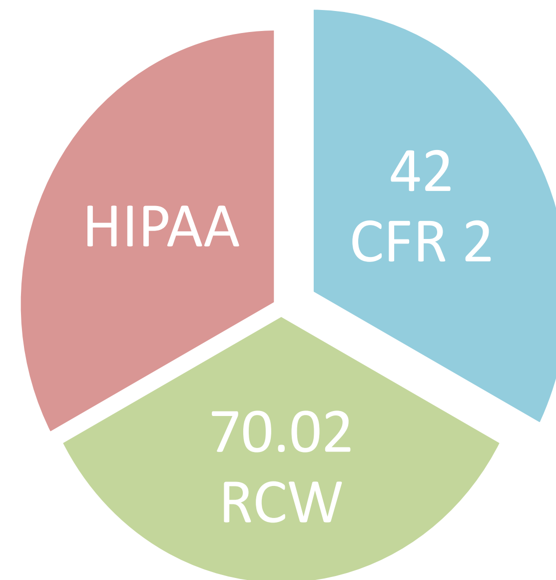
Recall the existing framework for Adolescents' Privacy & Confidentiality

- **70.02 RCW**: mental health information of minors is confidential, but may be disclosed to parents without authorization (among others)
- **HIPAA**: defers to state law about the release of a minor's personal health information
- **42 CFR 2**: does NOT defer to state law; requires the minor's consent to disclose SUD treatment information or records, including the fact of admission



… all of which together creates two tracks for sharing treatment information …

Release of treatment information or records

Adolescent initiated treatment

Solely mental health	Substance use disorder, including co-occurring disorders
A mental health professional should not *proactively* release information to a parent unless the adolescent states a clear desire to do so unless: • there is an "imminent threat to the health and safety of the adolescent or others", or • required by law	A professional may only share information or records with a parent if: • the adolescent provides written consent, or • permitted by federal law, 42 CFR 2

Provider discretion. If a mental health professional (MHP) intends to disclose information to a parent, the MHP must:

1. Give the adolescent advance notice
2. Provide the adolescent a reasonably opportunity to express concern
3. Document any objection by the adolescent in his or her medical record

Release of treatment information or records

Family initiated treatment

Solely mental health	Substance use disorder, including co-occurring disorders
A mental health professional is <u>*encouraged*</u> to release information and records, excluding psychotherapy notes, if they would assist the parent in understanding the nature of the evaluation or treatment. <u>Information includes</u> diagnosis, treatment plan and progress in treatment, recommended medication and referrals	A professional may only share information or records with a parent if: • the adolescent provides written consent, or • permitted by federal law, 42 CFR 2

Provider discretion The MHP may decline to release the information to the parent if the MHP determines it would be detrimental to the adolescent.

The MHP must document the reasons for declining to disclose information in the adolescent's medical record.

Release of treatment information or records

to the Health Care Authority, for FIT admissions

For admission involving solely mental health treatment	For admissions involving substance use disorder treatment
Notice must be provided to the HCA within 24 hours of the first treatment and admission.	Notice must redact all patient identifying information about the adolescent unless the adolescent provides written consent or if permitted by federal law, 42 CFR 2

More on sharing SUD treatment information!

A mental health professional or chemical dependency professional may seek the written consent of an adolescent …

IF BOTH:

1. The seeking written consent and
2. The sharing of the SUD treatment information or records

…Would not be detrimental to the adolescent.

WSHA Recommends: Consult with legal counsel if there is a question about whether 42 CFR 2 applies.

Release of treatment information or records

Provider protections

Civil immunity for decisions to disclose (or not) mental health treatment information or records	Civil immunity for decisions to disclose (or not) substance use disorder treatment information or records
"A mental health professional is not civilly liable for decisions to disclose information or records related solely to mental health services or not disclose such information or records **so long as the decision was reached in good faith and without gross negligence**."	"A chemical dependency professional or mental health professional providing inpatient… SUD evaluation or treatment is not civilly liable for the decision to disclose information or records related to SUD treatment **with the written consent of the adolescent** or to not disclose such information or records to a parent **without an adolescent's consent** .. **So long as the decision was reached in good faith and without gross negligence."**

Additional Resources

- E2SHB 1875
- WSHA Bulletin on E2SHB 1874
- WSHA Bulletin on hospital's obligations to provide notice of available treatment options 71.34
- HCA model form for providing notice of available treatment options under 71.34 RCW

Thank You!

Questions? Comments?

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