

**NOTE: The governor signed this measure on 5/18/2016.**

# An Act

HOUSE BILL 16-1063

BY REPRESENTATIVE(S) Foote and Duran, Brown, Buckner, Court, Fields, Ginal, Hamner, Kagan, Lee, McCann, Melton, Pettersen, Primavera, Rosenthal, Ryden, Tyler, Willett, Williams, Winter, Young, Hullinghorst; also SENATOR(S) Scheffel and Cadman, Aguilar, Carroll, Crowder, Donovan, Garcia, Guzman, Heath, Hodge, Johnston, Jones, Kefalas, Kerr, Martinez Humenik, Merrifield, Newell, Roberts, Tate, Todd.

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

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

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

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

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

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

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*Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

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

(II) A LICENSEE, REGISTRANT, OR CERTIFICATE HOLDER WHO DISCLOSES INFORMATION UNDER THIS PARAGRAPH (d) SHALL LIMIT THE DISCLOSURE TO APPROPRIATE SCHOOL OR SCHOOL DISTRICT PERSONNEL AND LAW ENFORCEMENT AGENCIES. SCHOOL OR SCHOOL DISTRICT PERSONNEL TO WHOM THE INFORMATION IS DISCLOSED SHALL MAINTAIN CONFIDENTIALITY OF THE DISCLOSED INFORMATION, REGARDLESS OF WHETHER THE INFORMATION CONSTITUTES AN EDUCATION RECORD SUBJECT TO FERPA, CONSISTENT WITH THE REQUIREMENTS OF FERPA AND REGULATIONS AND APPLICABLE GUIDELINES ADOPTED UNDER FERPA, BUT MAY DISCLOSE INFORMATION IN ACCORDANCE WITH SECTION 1232g (b) (1) OF FERPA AND 34 CFR 99.36 IF NECESSARY TO PROTECT THE HEALTH OR SAFETY OF STUDENTS OR OTHER PERSONS.

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

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

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

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

(A) "ARTICULABLE AND SIGNIFICANT THREAT" MEANS A THREAT TO THE HEALTH OR SAFETY OF A PERSON THAT, BASED ON THE TOTALITY OF THE CIRCUMSTANCES, CAN BE EXPLAINED OR ARTICULATED AND THAT

CONSTITUTES A THREAT OF SUBSTANTIAL BODILY HARM TO A PERSON.

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

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

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

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

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

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

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

**26-1-140. State exception to HIPAA - significant threat to schools - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY HEREBY DECLARES THAT, FOR THE HEALTH AND SAFETY OF COLORADO

SCHOOLS AND THEIR STUDENTS, TEACHERS, AND OTHER SCHOOL PERSONNEL, A POLICY ENABLING MENTAL HEALTH PROFESSIONALS AND SCHOOL OFFICIALS TO SHARE APPROPRIATE INFORMATION IN A RESPONSIBLE MANNER IS NECESSARY AND SERVES A COMPELLING NEED RELATED TO PUBLIC HEALTH, SAFETY, AND WELFARE. FURTHERMORE, THE GENERAL ASSEMBLY DECLARES THAT SHARING APPROPRIATE INFORMATION IS WARRANTED WHEN LEGITIMATE PRIVACY CONCERNS ARE OUTWEIGHED BY THE NEED TO PROTECT SCHOOLS AND THEIR STUDENTS AND STAFF.

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

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

**SECTION 3. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

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Dickey Lee Hullinghorst  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Bill L. Cadman  
PRESIDENT OF  
THE SENATE

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Marilyn Eddins  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Effie Ameen  
SECRETARY OF  
THE SENATE

APPROVED \_\_\_\_\_

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John W. Hickenlooper  
GOVERNOR OF THE STATE OF COLORADO