

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the Legislature. LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

FISCAL IMPACT REPORT

SPONSOR <u>SJC</u>	LAST UPDATED _____
	ORIGINAL DATE <u>3/17/23</u>
SHORT TITLE <u>Public Peace, Health, Safety & Welfare</u>	BILL <u>CS/Senate Bill</u>
	NUMBER <u>503/SJCS</u>
	ANALYST <u>Klundt</u>

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT* (dollars in thousands)

	FY23	FY24	FY25	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
	Indeterminate but minimal	Indeterminate but minimal	Indeterminate but minimal			DOH operating budget

Parentheses () indicate expenditure decreases.

*Amounts reflect most recent version of this legislation.

Sources of Information

LFC Files

Responses Received From

Department of Health (DOH)

Because of the short timeframe between the introduction of this bill and its first hearing, LFC has yet to receive analysis from other state, education, or judicial agencies. This analysis could be updated if that analysis is received.

SUMMARY

Synopsis of SJC Substitute for Senate Bill 503

The Senate Judiciary Committee Substitute for Senate Bill 503 (SB503) requires residential behavioral health facilities to obtain or provide evidence the facility attempted to obtain contact information for family members of the patient. If the information is obtained the facilities must notify family that the patient has been admitted. Residential behavioral health facilities that fail to comply shall be assessed a civil penalty not to exceed \$750 or subsequent violations not to exceed \$1,000 dollars.

FISCAL IMPLICATIONS

The Department of Health would likely have to provide oversight of facilities for implementation of this bill. As the department already provides surveys of behavioral health facilities there may be a fiscal impact to the operating budget but it is likely to be minimal. However, due to the short timeframe of this bill DOH was unable to provide a fiscal impact.

SIGNIFICANT ISSUES

DOH believes this bill may conflict with the Mental Health and Developmental Disabilities Code (NMSA, Section 43-1-1 et seq.). The Code states that a mental health client must provide written authorization for the disclosure of their confidential information, unless the disclosure falls within four exceptions under NMSA, Section 43-1-19:

(1) When the request is from a mental health or developmental disability professional or from an employee or trainee working with a person with a mental disability or developmental disability, to the extent that the practice, employment or training on behalf of the client requires access to such information is necessary;

(2) When such disclosure is necessary to protect against a clear and substantial risk of imminent serious physical injury or death inflicted by the client on the client's self or another;

(3) When the disclosure of such information is to the primary caregiver of the client and the disclosure is only of information necessary for the continuity of the client's treatment in the judgment of the treating physician or certified psychologist who discloses the information; or

(4) When such disclosure is to an insurer contractually obligated to pay part or all of the expenses relating to the treatment of the client at the residential facility. The information disclosed shall be limited to data identifying the client, facility and treating or supervising physician and the dates and duration of the residential treatment. It shall not be a defense to an insurer's obligation to pay that the information relating to the residential treatment of the client, apart from information disclosed pursuant to this section, has not been disclosed to the insurer.

DOH states as drafted, SB503 would not circumvent the requirements under the code to obtain a written authorization from the patient to make such a disclosure to family members.

According to the U.S. Health and Human Services Department (HHS), “hospital may notify family, friends, or caregivers of a patient in several circumstances:

- When the patient has a personal representative

A hospital may notify a patient’s personal representative about their admission or discharge and share other PHI with the personal representative without limitation. However, a hospital is permitted to refuse to treat a person as a personal representative if there are safety concerns associated with providing the information to the person, or if a health care professional determines that disclosure is not in the patient’s best interest.

- When the patient agrees or does not object to family involvement

A hospital may notify a patient’s family, friends, or caregivers if the patient agrees, or doesn’t object, or if a health care professional is able to infer from the surrounding circumstances, using professional judgment that the patient does not object. This includes when a patient’s family, friends, or caregivers have been involved in the patient’s health care in the past, and the individual did not object.

- When the patient becomes unable to agree or object and there has already been family involvement

When a patient is not present or cannot agree or object because of some incapacity or emergency, a health care provider may share relevant information about the patient with family, friends, or others involved in the patient's care or payment for care if the health care provider determines, based on professional judgment, that doing so is in the best interest of the patient.

For example, a psychiatric hospital may determine that it is in the best interests of an incapacitated patient to initially notify a member of their household, such as a parent, roommate, sibling, partner, or spouse, and inform them about the patient's location and general condition. This may include, for example, notifying a patient's spouse that the patient has been admitted to the hospital.

If the health care provider determines that it is in the patient's interest, the provider may share additional information that is directly related to the family member's or friend's involvement with the patient's care or payment for care, after they clarify the person's level of involvement. For example, a nurse treating a patient may determine that it is in the patient's best interest to discuss with the patient's adult child, who is the patient's primary caregiver, the medications found in a patient's backpack and ask about any other medications the patient may have at home.

Decision-making incapacity may be temporary or long-term. Upon a patient's regaining decision-making capacity, health providers should offer the patient the opportunity to agree or object to sharing their health information with involved family, friends, or caregivers.

- When notification is needed to lessen a serious and imminent threat of harm to the health or safety of the patient or others

A hospital may disclose the necessary protected health information to anyone who is in a position to prevent or lessen the threatened harm, including family, friends, and caregivers, without a patient's agreement. HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health or safety. For example, a health care provider may determine that a patient experiencing a mental health crisis has ingested an unidentified substance and that the provider needs to contact the patient's roommate to help identify the substance and provide the proper treatment, or the patient may have made a credible threat to harm a family member, who needs to be notified so he or she can take steps to avoid harm. OCR would not second guess a health care professional's judgment in determining that a patient presents a serious and imminent threat to their own, or others', health or safety."

Additionally HHS allows, "The HIPAA Privacy Rule, at 45 CFR 164.510(b), permits covered entities to notify, or assist in the notification of, family members, personal representatives, or other persons responsible for the care of the patient, of the patient's location, general condition, or death. Where the patient is present, or is otherwise available prior to the disclosure, and has capacity to make health care decisions, the covered entity may notify family and these other persons if the patient agrees or, when given the opportunity, does not object. The covered entity

may also use or disclose this information to notify the family and these other persons if it can reasonably infer from the circumstances, based on professional judgment, that the patient does not object. Under these circumstances, for example:

- A doctor may call a patient’s wife to tell her that her husband was in a car accident and is being treated in the emergency room for minor injuries.
- A doctor may contact a pregnant patient’s husband to let him know that his wife arrived at the hospital in labor and is about to give birth.
- A nurse may contact the patient’s friend to let him know that his roommate broke his leg falling down the stairs, has had surgery, and is in recovery.

Even when the patient is not present or it is impracticable because of emergency or incapacity to ask the patient about notifying someone, a covered entity can still notify family and these other persons when, in exercising professional judgment, it determines that doing so would be in the best interest of the patient. See 45 CFR 164.510(b). For example, a doctor may, using such professional judgment, call the adult daughter of an incapacitated patient to inform her that her father suffered a stroke and is in the intensive care unit of a hospital.”

KK/al/ne