March 11, 2015

Dear Chair Greenlick
House Health Care Committee

My name is Beckie Child and I live in SE Portland. I also have used mental health services most of my adult life in both the public and private sector. I have been hospitalized more than 20 times and homeless 3 times. I believe that I am one of the people that this bill intends to address. I also am an adjunct professor and doctoral student at Portland State University in the School of Social Work.

While I appreciate HB 2948's intent, I am opposed to the bill for several reasons. The bill assumes that all families are loving and caring. The reality is that families are complex. As someone who has been a victim of stalking and domestic violence; and other abuses the broadness of this bill frightens me.

1. Line 19 in Section 2(A)(i) of the bill states that the individual is not present or obtaining the individual's authorization is not practicable due to the individual's incapacity or an emergency circumstance—what is the meaning by not present?
2. Also, I would add that not just due to the individual's incapacity AND a serious or imminent emergency. This would then apply to anyone. I have attached a copy of a letter from Leon Rodriguez, the Director of the Office of Civil Rights in the U. S. Department of Health & Human Services in 2013 that discusses HIPAA's permission to provide information when there is an imminent risk of harm to self or others.
3. Section 3 in my opinion is a violation of HIPAA if people are competent. Another question I have about Section 3—Why does this section only apply to people diagnosed with mental illness? Why doesn't it apply to people with HIV, people with cancer or other medical problems? Singling a group of people out based on their diagnosis or disability may also be a violation of the Americans with Disabilities Act.
4. Regarding Section 3 (1) (b) and (c) HIPAA allows for this type of communication and does not require specific disclosure that people wish not disclosed. Additionally Section 3(1) (c) should be amended to include peer-delivered resources. In my opinion, the Oregon Legislature does not have the power to wave civil liability for federal laws such as HIPAA and the Americans with Disabilities act. The way that Section 3(2) is stated is problematic.

Sincerely,

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DEPARTMENT OF HEALTH & HUMAN SERVICES

Office of the Secretary

Director
Office for Civil Rights
Washington, D.C. 20201

January 15, 2013

Message to Our Nation's Health Care Providers:

In light of recent tragic and horrific events in our nation, including the mass shootings in Newtown, CT, and Aurora, CO, I wanted to take this opportunity to ensure that you are aware that the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule does not prevent your ability to disclose necessary information about a patient to law enforcement, family members of the patient, or other persons, when you believe the patient presents a serious danger to himself or other people.

The HIPAA Privacy Rule protects the privacy of patients' health information but is balanced to ensure that appropriate uses and disclosures of the information still may be made when necessary to treat a patient, to protect the nation's public health, and for other critical purposes, such as when a provider seeks to warn or report that persons may be at risk of harm because of a patient. **When a health care provider believes in good faith that such a warning is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others, the Privacy Rule allows the provider, consistent with applicable law and standards of ethical conduct, to alert those persons whom the provider believes are reasonably able to prevent or lessen the threat. Further, the provider is presumed to have had a good faith belief when his or her belief is based upon the provider's actual knowledge (i.e., based on the provider's own interaction with the patient) or in reliance on a credible representation by a person with apparent knowledge or authority (i.e., based on a credible report from a family member of the patient or other person). These provisions may be found in the Privacy Rule at 45 CFR § 164.512(j).**

Under these provisions, a health care provider may disclose patient information, including information from mental health records, if necessary, to law enforcement, family members of the patient, or any other persons who may reasonably be able to prevent or lessen the risk of harm. For example, if a mental health professional has a patient who has made a credible threat to inflict serious and imminent bodily harm on one or more persons, HIPAA permits the mental health professional to alert the police, a parent or other family member, school administrators or campus police, and others who may be able to intervene to avert harm from the threat.

In addition to professional ethical standards, most states have laws and/or court decisions which address, and in many instances require, disclosure of patient information to prevent or lessen the risk of harm. Providers should consult the laws applicable to their profession in the states where they practice, as well as 42 CFR Part 2 under federal law (governing the disclosure of substance abuse treatment records) to understand their duties and authority in situations where they have information indicating a threat to public safety.

We at the Office for Civil Rights understand that health care providers may at times have information about a patient that indicates a serious and imminent threat to health or safety. At those times, providers play an important role in protecting the safety of their patients and the broader community. I hope this letter is helpful in making clear that the HIPAA Privacy Rule does not prevent providers from sharing this information to fulfill their legal and ethical duties to warn or as otherwise necessary to prevent or lessen the risk of harm, consistent with applicable law and ethical standards.

Leon Rodriguez