

## SB0184S01 compared with SB0184

~~{deleted text}~~ shows text that was in SB0184 but was deleted in SB0184S01.

inserted text shows text that was not in SB0184 but was inserted into SB0184S01.

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Senator Mark B. Madsen proposes the following substitute bill:

### YOUTH SUICIDE PREVENTION REVISIONS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Luz Robles**

House Sponsor: ~~{ }~~ Gage Froerer

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#### LONG TITLE

##### General Description:

This bill amends provisions related to parental notification of certain safety threats to a parent's student.

##### Highlighted Provisions:

This bill:

- ▶ requires a school to notify a parent:
  - if the parent's student threatens to commit suicide; or
  - of an alleged incident of bullying, cyber-bullying, harassment, hazing, or retaliation involving the parent's student; ~~{and}~~
- ▶ requires a school to have a parent sign a statement acknowledging that the parent was notified of the suicide threat or bullying ~~{and}~~ and
- ▶ provides that a signed parental statement verifying the parent was notified of a

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suicide threat or bullying incident:

- is a private record for purposes of the Government Records Management Act;
- and
- may not be used by the school for the school's own purposes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**53A-11-605**, as last amended by Laws of Utah 2012, Chapter 425

**53A-13-302**, as last amended by Laws of Utah 1999, Chapter 284

**63G-2-202**, as last amended by Laws of Utah 2012, Chapter 377

**63G-2-302**, as last amended by Laws of Utah 2012, Chapters 74, 145, and 202

ENACTS:

**53A-13-303**, Utah Code Annotated 1953

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*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **53A-11-605** is amended to read:

**53A-11-605. Definitions -- School personnel -- Medical recommendations --**

#### **Exceptions -- Penalties.**

(1) As used in this section:

(a) "Health care professional" means a physician, physician assistant, nurse, dentist, or mental health therapist.

(b) "School personnel" means [~~any~~] a school district or charter school employee, including a licensed, part-time, contract, [~~and~~] or nonlicensed [~~employees~~] employee.

(2) School personnel may:

(a) provide information and observations to a student's parent or guardian about that student, including observations and concerns in the following areas:

(i) progress;

(ii) health and wellness;

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- (iii) social interactions;
  - (iv) behavior; or
  - (v) topics consistent with Subsection 53A-13-302(6);
  - (b) communicate information and observations between school personnel regarding a child;
  - (c) refer students to other appropriate school personnel and agents, consistent with local school board or charter school policy, including referrals and communication with a school counselor or other mental health professionals working within the school system;
  - (d) consult or use appropriate health care professionals in the event of an emergency while the student is at school, consistent with the student emergency information provided at student enrollment;
  - (e) exercise their authority relating to the placement within the school or readmission of a child who may be or has been suspended or expelled for a violation of Section 53A-11-904; and
  - (f) complete a behavioral health evaluation form if requested by a student's parent or guardian to provide information to a licensed physician.
- (3) School personnel shall:
- (a) report suspected child abuse consistent with Section 62A-4a-403;
  - (b) comply with applicable state and local health department laws, rules, and policies;
- and
- (c) conduct evaluations and assessments consistent with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments.
- (4) Except as provided in Subsection (2) [~~and~~], Subsection (6), and Section 53A-13-303, school personnel may not:
- (a) recommend to a parent or guardian that a child take or continue to take a psychotropic medication;
  - (b) require that a student take or continue to take a psychotropic medication as a condition for attending school;
  - (c) recommend that a parent or guardian seek or use a type of psychiatric or psychological treatment for a child;
  - (d) conduct a psychiatric or behavioral health evaluation or mental health screening,

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test, evaluation, or assessment of a child, except where this Subsection (4)(d) conflicts with the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq., and its subsequent amendments; or

(e) make a child abuse or neglect report to authorities, including the Division of Child and Family Services, solely or primarily on the basis that a parent or guardian refuses to consent to:

(i) a psychiatric, psychological, or behavioral treatment for a child, including the administration of a psychotropic medication to a child; or

(ii) a psychiatric or behavioral health evaluation of a child.

(5) Notwithstanding Subsection (4)(e), school personnel may make a report that would otherwise be prohibited under Subsection (4)(e) if failure to take the action described under Subsection (4)(e) would present a serious, imminent risk to the child's safety or the safety of others.

(6) Notwithstanding Subsection (4), a school counselor or other mental health professional acting in accordance with Title 58, Chapter 60, Mental Health Professional Practice Act, or licensed through the State Board of Education, working within the school system may:

(a) recommend, but not require, a psychiatric or behavioral health evaluation of a child;

(b) recommend, but not require, psychiatric, psychological, or behavioral treatment for a child;

(c) conduct a psychiatric or behavioral health evaluation or mental health screening, test, evaluation, or assessment of a child in accordance with Section 53A-13-302; and

(d) provide to a parent or guardian, upon the specific request of the parent or guardian, a list of three or more health care professionals or providers, including licensed physicians, psychologists, or other health specialists.

(7) Local school boards or charter schools shall adopt a policy:

(a) providing for training of appropriate school personnel on the provisions of this section; and

(b) indicating that an intentional violation of this section is cause for disciplinary action consistent with local school board or charter school policy and under Section 53A-8a-502.

(8) Nothing in this section shall be interpreted as discouraging general communication

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not prohibited by this section between school personnel and a student's parent or guardian.

Section 2. Section **53A-13-302** is amended to read:

### **53A-13-302. Activities prohibited without prior written consent -- Validity of consent -- Qualifications -- Training on implementation.**

(1) Policies adopted by a school district under Section 53A-13-301 shall include prohibitions on the administration to a student of any psychological or psychiatric examination, test, or treatment, or any survey, analysis, or evaluation without the prior written consent of the student's parent or legal guardian, in which the purpose or evident intended effect is to cause the student to reveal information, whether the information is personally identifiable or not, concerning the student's or any family member's:

(a) political affiliations or, except as provided under Section 53A-13-101.1 or rules of the State Board of Education, political philosophies;

(b) mental or psychological problems;

(c) sexual behavior, orientation, or attitudes;

(d) illegal, anti-social, self-incriminating, or demeaning behavior;

(e) critical appraisals of individuals with whom the student or family member has close family relationships;

(f) religious affiliations or beliefs;

(g) legally recognized privileged and analogous relationships, such as those with lawyers, medical personnel, or ministers; and

(h) income, except as required by law.

(2) Prior written consent under Subsection (1) is required in all grades, kindergarten through grade 12.

(3) ~~[The]~~ Except as provided in Section 53A-13-303, the prohibitions under Subsection (1) shall also apply within the curriculum and other school activities unless prior written consent of the student's parent or legal guardian has been obtained.

(4) Written parental consent is valid only if a parent or legal guardian has been first given written notice, including notice that a copy of the educational or student survey questions to be asked of the student in obtaining the desired information is made available at the school, and a reasonable opportunity to obtain written information concerning:

(a) records or information, including information about relationships, that may be

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examined or requested;

(b) the means by which the records or information shall be examined or reviewed;

(c) the means by which the information is to be obtained;

(d) the purposes for which the records or information are needed;

(e) the entities or persons, regardless of affiliation, who will have access to the personally identifiable information; and

(f) a method by which a parent of a student can grant permission to access or examine the personally identifiable information.

(5) (a) Except in response to a situation which a school employee reasonably believes to be an emergency, or as authorized under Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting Requirements, or by order of a court, disclosure to a parent or legal guardian must be given at least two weeks before information protected under this section is sought.

(b) Following disclosure, a parent or guardian may waive the two week minimum notification period.

(c) Unless otherwise agreed to by a student's parent or legal guardian and the person requesting written consent, the authorization is valid only for the activity for which it was granted.

(d) A written withdrawal of authorization submitted to the school principal by the authorizing parent or guardian terminates the authorization.

(e) A general consent used to approve admission to school or involvement in special education, remedial education, or a school activity does not constitute written consent under this section.

(6) (a) This section does not limit the ability of a student under Section 53A-13-101.3 to spontaneously express sentiments or opinions otherwise protected against disclosure under this section.

(b) (i) If a school employee or agent believes that a situation exists which presents a serious threat to the well-being of a student, that employee or agent shall notify the student's parent or guardian without delay.

(ii) If, however, the matter has been reported to the Division of Child and Family Services within the Department of Human Services, it is the responsibility of the division to notify the student's parent or guardian of any possible investigation, prior to the student's return

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home from school.

(iii) The division may be exempted from the notification requirements described in this Subsection (6)(b)(ii) only if it determines that the student would be endangered by notification of his parent or guardian, or if that notification is otherwise prohibited by state or federal law.

(7) Local school boards shall provide inservice for teachers and administrators within their respective school districts on the implementation of this section.

(8) The board shall provide procedures for disciplinary action for violations of this section.

Section 3. Section **53A-13-303** is enacted to read:

### **53A-13-303. Parental notification of certain incidents required.**

(1) For purposes of this section:

(a) "Bullying" has the same meaning as defined in Section 53A-11a-102.

(b) "Cyber-bullying" has the same meaning as defined in Section 53A-11a-102.

(c) "Harassment" has the same meaning as defined in Section 53A-11a-102.

(d) "Hazing" has the same meaning as defined in Section 53A-11a-102.

(e) "Parent" includes a student's legal guardian.

(f) "Parental statement" means a statement a parent is required to sign in accordance with Subsection (3).

(~~ff~~g) "Retaliation" has the same meaning as defined in Section 53A-11a-102.

(h) "School":

(i) means a public school; and

(ii) includes a school's local school board or charter school governing board.

(2) A school shall notify a parent:

(a) if the parent's student threatens to commit suicide; or

(b) of an alleged incident of bullying, cyber-bullying, harassment, hazing, or retaliation involving the parent's student.

(3) (a) If a school notifies a parent of an incident or threat required to be reported under Subsection (2), the school shall require the parent to sign a statement acknowledging that the parent was notified of the incident or threat.

(b) A school may not:

(i) disclose a parental statement, including any information obtained to prepare the

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parental statement, to a person other than a person authorized to receive the parental statement described in Subsection (3)(c); or

(ii) use the parental statement, including any information obtained to prepare the parental statement, for the school's own purposes, including the following purposes:

(A) for a report or study;

(B) for a statistical analysis; or

(C) to conduct research.

(c) A school may disclose a parental statement, including any information obtained to prepare the parental statement:

(i) to the parent or the parent's student; or

(ii) to a person if required to disclose the parental statement or information to a person pursuant to the terms of a court order as described in Subsection 63G-2-202(7).

(4) The school shall maintain a copy of a parental statement ~~described in Subsection (3)~~ for at least four years.

(5) At the request of a parent, a school may provide information and make recommendations related to an incident or threat described in Subsection (2).

†

### Legislative Review Note

— as of ~~2-12-13~~ 8:45 AM

— ~~Office of Legislative Research and General Counsel~~ Section 4. Section 63G-2-202 is amended to read:

**63G-2-202. Access to private, controlled, and protected documents.**

(1) Upon request, and except as provided in Subsection (11)(a), a governmental entity shall disclose a private record to:

(a) the subject of the record;

(b) the parent or legal guardian of an unemancipated minor who is the subject of the record;



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(c) the legal guardian of a legally incapacitated individual who is the subject of the record;

(d) any other individual who:

(i) has a power of attorney from the subject of the record;

(ii) submits a notarized release from the subject of the record or the individual's legal representative dated no more than 90 days before the date the request is made; or

(iii) if the record is a medical record described in Subsection 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the record or information in the record is consistent with normal professional practice and medical ethics; or

(e) any person to whom the record must be provided pursuant to:

(i) court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers.

(2) (a) Upon request, a governmental entity shall disclose a controlled record to:

(i) a physician, psychologist, certified social worker, insurance provider or producer, or a government public health agency upon submission of:

(A) a release from the subject of the record that is dated no more than 90 days prior to the date the request is made; and

(B) a signed acknowledgment of the terms of disclosure of controlled information as provided by Subsection (2)(b); and

(ii) any person to whom the record must be disclosed pursuant to:

(A) a court order as provided in Subsection (7); or

(B) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers.

(b) A person who receives a record from a governmental entity in accordance with Subsection (2)(a)(i) may not disclose controlled information from that record to any person, including the subject of the record.

(3) If there is more than one subject of a private or controlled record, the portion of the record that pertains to another subject shall be segregated from the portion that the requester is entitled to inspect.

(4) Upon request, and except as provided in Subsection (10) or (11)(b), a governmental

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entity shall disclose a protected record to:

(a) the person who submitted the record;

(b) any other individual who:

(i) has a power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or

(ii) submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made;

(c) any person to whom the record must be provided pursuant to:

(i) a court order as provided in Subsection (7); or

(ii) a legislative subpoena as provided in Title 36, Chapter 14, Legislative Subpoena

Powers; or

(d) the owner of a mobile home park, subject to the conditions of Subsection 41-1a-116(5).

(5) A governmental entity may disclose a private, controlled, or protected record to another governmental entity, political subdivision, another state, the United States, or a foreign government only as provided by Section 63G-2-206.

(6) Before releasing a private, controlled, or protected record, the governmental entity shall obtain evidence of the requester's identity.

(7) A governmental entity shall disclose a record pursuant to the terms of a court order signed by a judge from a court of competent jurisdiction, provided that:

(a) the record deals with a matter in controversy over which the court has jurisdiction;

(b) the court has considered the merits of the request for access to the record;

(c) the court has considered and, where appropriate, limited the requester's use and further disclosure of the record in order to protect:

(i) privacy interests in the case of private or controlled records;

(ii) business confidentiality interests in the case of records protected under Subsection 63G-2-305(1), (2), (39)(a)(ii), or (39)(a)(vi); and

(iii) privacy interests or the public interest in the case of other protected records;

(d) to the extent the record is properly classified private, controlled, or protected, the interests favoring access, considering limitations thereon, are greater than or equal to the

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interests favoring restriction of access; and

(e) where access is restricted by a rule, statute, or regulation referred to in Subsection 63G-2-201(3)(b), the court has authority independent of this chapter to order disclosure.

(8) (a) [A] Except as provided in Subsection (8)(d), a governmental entity may disclose or authorize disclosure of private or controlled records for research purposes if the governmental entity:

(i) determines that the research purpose cannot reasonably be accomplished without use or disclosure of the information to the researcher in individually identifiable form;

(ii) determines that:

(A) the proposed research is bona fide; and

(B) the value of the research is greater than or equal to the infringement upon personal privacy;

(iii) (A) requires the researcher to assure the integrity, confidentiality, and security of the records; and

(B) requires the removal or destruction of the individual identifiers associated with the records as soon as the purpose of the research project has been accomplished;

(iv) prohibits the researcher from:

(A) disclosing the record in individually identifiable form, except as provided in Subsection (8)(b); or

(B) using the record for purposes other than the research approved by the governmental entity; and

(v) secures from the researcher a written statement of the researcher's understanding of and agreement to the conditions of this Subsection (8) and the researcher's understanding that violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution under Section 63G-2-801.

(b) A researcher may disclose a record in individually identifiable form if the record is disclosed for the purpose of auditing or evaluating the research program and no subsequent use or disclosure of the record in individually identifiable form will be made by the auditor or evaluator except as provided by this section.

(c) A governmental entity may require indemnification as a condition of permitting research under this Subsection (8).

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(d) A governmental entity may not disclose or authorize disclosure of a private record for research purposes as described in this Subsection (8) if the private record is a parental statement described in Subsection 63G-2-302(1)(s).

(9) (a) Under Subsections 63G-2-201(5)(b) and 63G-2-401(6), a governmental entity may disclose to persons other than those specified in this section records that are:

(i) private under Section 63G-2-302; or

(ii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(b) Under Subsection 63G-2-403(11)(b), the records committee may require the disclosure to persons other than those specified in this section of records that are:

(i) private under Section 63G-2-302;

(ii) controlled under Section 63G-2-304; or

(iii) protected under Section 63G-2-305 subject to Section 63G-2-309 if a claim for business confidentiality has been made under Section 63G-2-309.

(c) Under Subsection 63G-2-404(8), the court may require the disclosure of records that are private under Section 63G-2-302, controlled under Section 63G-2-304, or protected under Section 63G-2-305 to persons other than those specified in this section.

(10) A record contained in the Management Information System, created in Section 62A-4a-1003, that is found to be unsubstantiated, unsupported, or without merit may not be disclosed to any person except the person who is alleged in the report to be a perpetrator of abuse, neglect, or dependency.

(11) (a) A private record described in Subsection 63G-2-302(2)(f) may only be disclosed as provided in Subsection (1)(e).

(b) A protected record described in Subsection 63G-2-305(42) may only be disclosed as provided in Subsection (4)(c) or Section 62A-3-312.

(12) (a) A private, protected, or controlled record described in Section 62A-16-301 shall be disclosed as required under:

(i) Subsections 62A-16-301(1)(b), (2), and (4)(c); and

(ii) Subsections 62A-16-302(1) and (6).

(b) A record disclosed under Subsection (12)(a) shall retain its character as private, protected, or controlled.

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Section 5. Section 63G-2-302 is amended to read:

### 63G-2-302. Private records.

(1) The following records are private:

(a) records concerning an individual's eligibility for unemployment insurance benefits, social services, welfare benefits, or the determination of benefit levels;

(b) records containing data on individuals describing medical history, diagnosis, condition, treatment, evaluation, or similar medical data;

(c) records of publicly funded libraries that when examined alone or with other records identify a patron;

(d) records received by or generated by or for:

(i) the Independent Legislative Ethics Commission, except for:

(A) the commission's summary data report that is required under legislative rule; and

(B) any other document that is classified as public under legislative rule; or

(ii) a Senate or House Ethics Committee in relation to the review of ethics complaints, unless the record is classified as public under legislative rule;

(e) records received or generated for a Senate confirmation committee concerning character, professional competence, or physical or mental health of an individual:

(i) if prior to the meeting, the chair of the committee determines release of the records:

(A) reasonably could be expected to interfere with the investigation undertaken by the committee; or

(B) would create a danger of depriving a person of a right to a fair proceeding or impartial hearing; and

(ii) after the meeting, if the meeting was closed to the public;

(f) employment records concerning a current or former employee of, or applicant for employment with, a governmental entity that would disclose that individual's home address, home telephone number, Social Security number, insurance coverage, marital status, or payroll deductions;

(g) records or parts of records under Section 63G-2-303 that a current or former employee identifies as private according to the requirements of that section;

(h) that part of a record indicating a person's Social Security number or federal employer identification number if provided under Section 31A-23a-104, 31A-25-202,

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31A-26-202, 58-1-301, 58-55-302, 61-1-4, or 61-2f-203;

(i) that part of a voter registration record identifying a voter's:

(i) driver license or identification card number;

(ii) Social Security number, or last four digits of the Social Security number; or

(iii) email address;

(j) a record that:

(i) contains information about an individual;

(ii) is voluntarily provided by the individual; and

(iii) goes into an electronic database that:

(A) is designated by and administered under the authority of the Chief Information

Officer; and

(B) acts as a repository of information about the individual that can be electronically retrieved and used to facilitate the individual's online interaction with a state agency;

(k) information provided to the Commissioner of Insurance under:

(i) Subsection 31A-23a-115(2)(a);

(ii) Subsection 31A-23a-302(3); or

(iii) Subsection 31A-26-210(3);

(l) information obtained through a criminal background check under Title 11, Chapter 40, Criminal Background Checks by Political Subdivisions Operating Water Systems;

(m) information provided by an offender that is:

(i) required by the registration requirements of Title 77, Chapter 41, Sex and Kidnap

Offender Registry; and

(ii) not required to be made available to the public under Subsection 77-41-110(4);

(n) a statement and any supporting documentation filed with the attorney general in accordance with Section 34-45-107, if the federal law or action supporting the filing involves homeland security;

(o) electronic toll collection customer account information received or collected under Section 72-6-118, including contact and payment information and customer travel data;

(p) an email address provided by a military or overseas voter under Section 20A-16-501;

(q) a completed military-overseas ballot that is electronically transmitted under Title

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20A, Chapter 16, Uniform Military and Overseas Voters Act; [and]

(r) records received by or generated by or for the Political Subdivisions Ethics Review Commission established in Section 11-49-201, except for:

(i) the commission's summary data report that is required in Section 11-49-202; and

(ii) any other document that is classified as public in accordance with Title 11, Chapter 49, Political Subdivisions Ethics Review Commission[-]; and

(s) a parental statement described in Subsection 53A-13-303(3).

(2) The following records are private if properly classified by a governmental entity:

(a) records concerning a current or former employee of, or applicant for employment with a governmental entity, including performance evaluations and personal status information such as race, religion, or disabilities, but not including records that are public under Subsection 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

(b) records describing an individual's finances, except that the following are public:

(i) records described in Subsection 63G-2-301(2);

(ii) information provided to the governmental entity for the purpose of complying with a financial assurance requirement; or

(iii) records that must be disclosed in accordance with another statute;

(c) records of independent state agencies if the disclosure of those records would conflict with the fiduciary obligations of the agency;

(d) other records containing data on individuals the disclosure of which constitutes a clearly unwarranted invasion of personal privacy;

(e) records provided by the United States or by a government entity outside the state that are given with the requirement that the records be managed as private records, if the providing entity states in writing that the record would not be subject to public disclosure if retained by it; and

(f) any portion of a record in the custody of the Division of Aging and Adult Services, created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

(3) (a) As used in this Subsection (3), "medical records" means medical reports, records, statements, history, diagnosis, condition, treatment, and evaluation.

(b) Medical records in the possession of the University of Utah Hospital, its clinics,

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doctors, or affiliated entities are not private records or controlled records under Section 63G-2-304 when the records are sought:

(i) in connection with any legal or administrative proceeding in which the patient's physical, mental, or emotional condition is an element of any claim or defense; or

(ii) after a patient's death, in any legal or administrative proceeding in which any party relies upon the condition as an element of the claim or defense.

(c) Medical records are subject to production in a legal or administrative proceeding according to state or federal statutes or rules of procedure and evidence as if the medical records were in the possession of a nongovernmental medical care provider.