
SUBSTITUTE HOUSE BILL 2568

State of Washington 52nd Legislature 1992 Regular Session

By House Committee on Health Care (originally sponsored by Representatives Appelwick, Morris, Moyer and Paris)

Read first time 02/07/92.

1 AN ACT Relating to public records; and amending RCW 70.02.010,
2 70.02.020, 70.02.030, 70.02.050, 70.02.060, and 70.02.080.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 70.02.010 and 1991 c 335 s 102 are each amended to
5 read as follows:

6 As used in this chapter, unless the context otherwise requires:

7 (1) "Audit" means an assessment, evaluation, determination, or
8 investigation of a health care provider by a person not employed by or
9 affiliated with the provider to determine compliance with:

10 (a) Statutory, regulatory, fiscal, medical, or scientific
11 standards;

12 (b) A private or public program of payments to a health care
13 provider; or

14 (c) Requirements for licensing, accreditation, or certification.

1 (2) "Directory information" means information disclosing the
2 presence, and for the purpose of identification, the name, residence,
3 sex, and the general health condition of a particular patient who is a
4 patient in a health care facility or who is currently receiving
5 emergency health care in a health care facility.

6 (3) "General health condition" means the patient's health status
7 described in terms of "critical," "poor," "fair," "good," "excellent,"
8 or terms denoting similar conditions.

9 (4) "Health care" means any care, service, or procedure provided by
10 a health care provider:

11 (a) To diagnose, treat, or maintain a patient's physical or mental
12 condition; or

13 (b) That affects the structure or any function of the human body.

14 (5) "Health care facility" means a hospital, clinic, nursing home,
15 laboratory, office, or similar place where a health care provider
16 provides health care to patients.

17 (6) "Health care information" means any information, whether oral
18 or recorded in any form or medium, that identifies or can readily be
19 associated with the identity of a patient and directly relates to the
20 patient's health care. The term includes any record of disclosures of
21 health care information.

22 (7) "Health care provider" means a person who is licensed,
23 certified, registered, or otherwise authorized by the law of this state
24 to provide health care in the ordinary course of business or practice
25 of a profession.

26 (8) "Institutional review board" means any board, committee, or
27 other group formally designated by an institution, or authorized under
28 federal or state law, to review, approve the initiation of, or conduct
29 periodic review of research programs to assure the protection of the
30 rights and welfare of human research subjects.

1 (9) "Maintain," as related to health care information, means to
2 hold, possess, preserve, retain, store, or control that information.

3 (10) "Patient" means an individual who receives or has received
4 health care. The term includes a deceased individual who has received
5 health care.

6 (11) "Person" means an individual, corporation, business trust,
7 estate, trust, partnership, association, joint venture, government,
8 governmental subdivision or agency, or any other legal or commercial
9 entity.

10 (12) "Reasonable fee" means the charges for duplicating or
11 searching the record specified in RCW 36.18.020 (8) or (16),
12 respectively. However, where editing of records by a health care
13 provider is required by statute and is done by the provider personally,
14 the fee may be the usual and customary charge for a basic office visit.

15 (13) "Third-party payor" means an entity regulated under Title 48
16 RCW authorized to transact business in this state or other
17 jurisdiction, including a health care service contractor, and health
18 maintenance organization; or an employee welfare benefit plan; or a
19 state or federal health benefit program.

20 **Sec. 2.** RCW 70.02.020 and 1991 c 335 s 201 are each amended to
21 read as follows:

22 Except as authorized in RCW 70.02.050, a health care provider, an
23 individual who assists a health care provider in the delivery of health
24 care, or an agent and employee of a health care provider may not
25 disclose health care information about a patient to any other person
26 without the patient's written authorization. A disclosure made under
27 a patient's written authorization must conform to the authorization.

28 Health care providers or facilities shall chart all disclosures,
29 except to third-party ((health—care)) payors, of health care

1 information, such chartings to become part of the health care
2 information.

3 **Sec. 3.** RCW 70.02.030 and 1991 c 335 s 202 are each amended to
4 read as follows:

5 (1) A patient may authorize a health care provider to disclose the
6 patient's health care information. A health care provider shall honor
7 an authorization and, if requested, provide a copy of the recorded
8 health care information unless the health care provider denies the
9 patient access to health care information under RCW 70.02.090.

10 (2) A health care provider may charge a reasonable fee(~~(, not to~~
11 ~~exceed the health care provider's actual cost)) for providing the~~
12 health care information(~~(,)~~) and is not required to honor an
13 authorization until the fee is paid.

14 (3) To be valid, a disclosure authorization to a health care
15 provider shall:

16 (a) Be in writing, dated, and signed by the patient;

17 (b) Identify the nature of the information to be disclosed;

18 (c) Identify the name, address, and institutional affiliation of
19 the person to whom the information is to be disclosed;

20 (d) Except for third-party payors, identify the provider who is to
21 make the disclosure; and

22 (e) Identify the patient.

23 (4) Except as provided by this chapter, the signing of an
24 authorization by a patient is not a waiver of any rights a patient has
25 under other statutes, the rules of evidence, or common law.

26 (5) A health care provider shall retain each authorization or
27 revocation in conjunction with any health care information from which
28 disclosures are made. This requirement shall not apply to disclosures
29 to third-party (~~(health care))~~ payors.

1 (6) Except for authorizations to provide information to third-party
2 ((health care)) payors, an authorization may not permit the release of
3 health care information relating to future health care that the patient
4 receives more than ninety days after the authorization was signed.
5 Patients shall be advised of the period of validity of their
6 authorization on the disclosure authorization form. If the
7 authorization does not contain an expiration date, it expires ninety
8 days after it is signed.

9 ~~((7) Except for authorizations to provide information to third-~~
10 ~~party health payors, an authorization in effect on July 28, 1991,~~
11 ~~remains valid for six months after July 28, 1991, unless an earlier~~
12 ~~date is specified or it is revoked under RCW 70.02.040. Health care~~
13 ~~information disclosed under such an authorization is otherwise subject~~
14 ~~to this chapter. An authorization written after July 28, 1991, becomes~~
15 ~~invalid after the expiration date contained in the authorization, which~~
16 ~~may not exceed ninety days. If the authorization does not contain an~~
17 ~~expiration date, it expires ninety days after it is signed.))~~

18 **Sec. 4.** RCW 70.02.050 and 1991 c 335 s 204 are each amended to
19 read as follows:

20 (1) A health care provider may disclose health care information
21 about a patient without the patient's authorization to the extent a
22 recipient needs to know the information, if the disclosure is:

23 (a) To a person who the provider reasonably believes is providing
24 health care to the patient;

25 (b) To any other person who requires health care information for
26 health care education, or to provide planning, quality assurance, peer
27 review, or administrative, legal, financial, or actuarial services to
28 the health care provider; or for assisting the health care provider in

1 the delivery of health care and the health care provider reasonably
2 believes that the person:

3 (i) Will not use or disclose the health care information for any
4 other purpose; and

5 (ii) Will take appropriate steps to protect the health care
6 information;

7 (c) To any other health care provider reasonably believed to have
8 previously provided health care to the patient, to the extent necessary
9 to provide health care to the patient, unless the patient has
10 instructed the health care provider in writing not to make the
11 disclosure;

12 (d) To any person if the health care provider reasonably believes
13 that disclosure will avoid or minimize an imminent danger to the health
14 or safety of the patient or any other individual, however there is no
15 obligation under this chapter on the part of the provider to so
16 disclose;

17 (e) Oral, and made to immediate family members of the patient, or
18 any other individual with whom the patient is known to have a close
19 personal relationship, if made in accordance with good medical or other
20 professional practice, unless the patient has instructed the health
21 care provider in writing not to make the disclosure;

22 (f) To a health care provider who is the successor in interest to
23 the health care provider maintaining the health care information;

24 (g) For use in a research project that an institutional review
25 board has determined:

26 (i) Is of sufficient importance to outweigh the intrusion into the
27 privacy of the patient that would result from the disclosure;

28 (ii) Is impracticable without the use or disclosure of the health
29 care information in individually identifiable form;

1 (iii) Contains reasonable safeguards to protect the information
2 from redisclosure;

3 (iv) Contains reasonable safeguards to protect against identifying,
4 directly or indirectly, any patient in any report of the research
5 project; and

6 (v) Contains procedures to remove or destroy at the earliest
7 opportunity, consistent with the purposes of the project, information
8 that would enable the patient to be identified, unless an institutional
9 review board authorizes retention of identifying information for
10 purposes of another research project;

11 (h) To a person who obtains information for purposes of an audit,
12 if that person agrees in writing to:

13 (i) Remove or destroy, at the earliest opportunity consistent with
14 the purpose of the audit, information that would enable the patient to
15 be identified; and

16 (ii) Not to disclose the information further, except to accomplish
17 the audit or report unlawful or improper conduct involving fraud in
18 payment for health care by a health care provider or patient, or other
19 unlawful conduct by the health care provider;

20 (i) To an official of a penal or other custodial institution in
21 which the patient is detained;

22 (j) To provide directory information, unless the patient has
23 instructed the health care provider not to make the disclosure;

24 (k) To provide, in cases of public record, name, residence, sex,
25 age, occupation, condition, diagnosis or extent and location of
26 injuries as determined by a physician, and whether the patient was
27 conscious when admitted.

28 (2) A health care provider shall disclose health care information
29 about a patient without the patient's authorization if the disclosure
30 is:

1 (a) To federal, state, or local public health authorities, to the
2 extent the health care provider is required by law to report health
3 care information; when needed to determine compliance with state or
4 federal licensure, certification or registration rules or laws; or when
5 needed to protect the public health;

6 (b) To federal, state, or local law enforcement authorities to the
7 extent the health care provider is required by law;

8 (c) Pursuant to compulsory process in accordance with RCW
9 70.02.060.

10 (3) All state or local agencies obtaining patient health care
11 information pursuant to this section shall adopt rules establishing
12 their record acquisition, retention, and security policies that are
13 consistent with this chapter.

14 **Sec. 5.** RCW 70.02.060 and 1991 c 335 s 205 are each amended to
15 read as follows:

16 (1) Before service of a discovery request or compulsory process on
17 a health care provider for health care information, an attorney shall
18 provide advance notice to the health care provider and the patient or
19 the patient's attorney involved through service of process or first
20 class mail, indicating the health care provider from whom the
21 information is sought, what health care information is sought, and the
22 date by which a protective order must be obtained to prevent the health
23 care provider from complying. Such date shall give the patient and the
24 health care provider adequate time to seek a protective order, but in
25 no event be less than fourteen days since the date of service or
26 delivery to the patient and the health care provider of the foregoing.
27 Thereafter the request for discovery or compulsory process shall be
28 served on the health care provider.

1 (2) Without the written consent of the patient, the health care
2 provider may not disclose the health care information sought under
3 subsection (1) of this section if the requestor has not complied with
4 the requirements of subsection (1) of this section. In the absence of
5 a protective order issued by a court of competent jurisdiction
6 forbidding compliance, the health care provider shall disclose the
7 information in accordance with this chapter. In the case of
8 compliance, the request for discovery or compulsory process shall be
9 made a part of the patient record.

10 (3) Production of health care information under this section, in
11 and of itself, does not constitute a waiver of any privilege,
12 objection, or defense existing under other law or rule of evidence or
13 procedure.

14 (4) The health care provider may charge a reasonable fee for
15 providing the health care information.

16 **Sec. 6.** RCW 70.02.080 and 1991 c 335 s 301 are each amended to
17 read as follows:

18 (1) Upon receipt of a written request from a patient to examine or
19 copy all or part of the patient's recorded health care information, a
20 health care provider, as promptly as required under the circumstances,
21 but no later than fifteen working days after receiving the request
22 shall:

23 (a) Make the information available for examination during regular
24 business hours and provide a copy, if requested, to the patient;

25 (b) Inform the patient if the information does not exist or cannot
26 be found;

27 (c) If the health care provider does not maintain a record of the
28 information, inform the patient and provide the name and address, if
29 known, of the health care provider who maintains the record;

1 (d) If the information is in use or unusual circumstances have
2 delayed handling the request, inform the patient and specify in writing
3 the reasons for the delay and the earliest date, not later than twenty-
4 one working days after receiving the request, when the information will
5 be available for examination or copying or when the request will be
6 otherwise disposed of; or

7 (e) Deny the request, in whole or in part, under RCW 70.02.090 and
8 inform the patient.

9 (2) Upon request, the health care provider shall provide an
10 explanation of any code or abbreviation used in the health care
11 information. If a record of the particular health care information
12 requested is not maintained by the health care provider in the
13 requested form, the health care provider is not required to create a
14 new record or reformulate an existing record to make the health care
15 information available in the requested form. The health care provider
16 may charge a reasonable fee(~~(, not to exceed the health care provider's~~
17 ~~actual cost,)) for providing the health care information and is not
18 required to permit examination or copying until the fee is paid.~~