

SENATE BILL REPORT

SB 6162

As Reported By Senate Committee On:
Health & Long-Term Care, February 4, 2004

Title: An act relating to the disclosure of health care information for law enforcement purposes without the patient's authorization.

Brief Description: Authorizing disclosure of health care information for law enforcement purposes without patient's consent.

Sponsors: Senators Brandland, Pflug and Oke.

Brief History:

Committee Activity: Health & Long-Term Care: 1/21/04, 2/4/04 [DPS].

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6162 be substituted therefor, and the substitute bill do pass.

Signed by Senators Deccio, Chair; Winsley, Vice Chair; Brandland, Franklin, Keiser and Parlette.

Staff: Tanya Karwaki (786-7447)

Background: Currently, the circumstances when a health care provider may disclose health care information about a patient without the patient's authorization and when a health care provider is required to disclose health care information about a patient without the patient's authorization are specified in statute. For example, a health care provider may disclose health care information without authorization to other health care providers who are caring for the patient, and in the case of a hospital or health care provider to provide, in cases reported by fire, police, sheriff, or other public authority, name, residence, sex, age, occupation, condition, diagnosis, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted. Examples of when health care providers shall disclose health care information about patients, without the patient's authorization, include disclosure to federal, state, or local public health authorities in order to safeguard public health and disclosure to county coroners and medical examiners for the investigation of deaths.

The federal Health Insurance Portability and Accountability Act (HIPAA) contains privacy regulations applicable to covered entities. The regulations cover protected health information which is individually identifiable information. Entities that are covered by HIPAA are prohibited from disclosing protected health information without patient consent except as permitted or required by federal regulations.

There is concern that the disclosure of health care information by providers to law enforcement authorities may create liability under HIPAA.

Summary of Substitute Bill: The statutory provision permitting a health care provider to disclose health care information about a patient without the patient's authorization in cases reported by fire, police, sheriff, or other public authority is deleted.

A new requirement for health care providers to disclose health care information about a patient without the patient's authorization is created for federal, state, or local law enforcement authorities, upon request, in cases of firearm injury, or other injury that federal, state, and local law enforcement authorities reasonably believe resulted from a criminal act. If known, the patient's name, residence, sex, age, condition, diagnosis or extent of injuries, the name of the health care provider, whether the patient was conscious when admitted, whether the patient has been transferred to another facility, and the patient's discharge time and date.

"Federal, state, or local law enforcement authorities" is defined.

When a person reported missing has not been found within 30 days of the report, the person's dentist shall provide the person's dental records to law enforcement authorities when presented with the written consent from the missing person's family or next of kin or with a statement from the law enforcement authority that the missing person's family or next of kin refuses to consent to the release of dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

The identification and criminal history section to which the law enforcement authorities submit a missing person's report and dental records is clarified to "identification, child abuse, vulnerable adult abuse, and criminal history," as previously designated in another statute.

Substitute Bill Compared to Original Bill: The substitute bill provides that law enforcement, not the provider, reasonably believe a wound or injury resulted from a criminal act. It broadens the definition of federal, state, or local law enforcement authorities to include an officer or employee. It also clarifies the specific information that a health care provider shall disclose, upon request from law enforcement authorities.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill is an attempt to return to what the situation was before the federal Health Insurance Portability and Accountability Act (HIPAA). Now, there is a question if when disclosure is permitted but not required under HIPAA whether, in fact, hospitals can disclose the information. The bill should be amended to reflect the parties' agreement. Technical changes should also be made to further specify the term "diagnosis."

Testimony Against: None.

Testified: Tom McBride, Pam Loginsky, Washington Association of Pros. Attys; Leo Poort, Washington State Dental Association (pro); Susie Tracy, Washington State Medical Assn. (pro w/amendment).