

HOUSE BILL REPORT

ESSB 6106

As Reported by House Committee On: Health Care

Title: An act relating to disclosure of health care information for law enforcement purposes.

Brief Description: Requiring disclosure of specified health care information for law enforcement purposes.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senator Brandland).

Brief History:

Committee Activity:

Health Care: 2/17/06, 2/23/06 [DPA].

Brief Summary of Engrossed Substitute Bill (As Amended by House Committee)

- Requires health care providers to disclose a patient's health care information to law enforcement authorities when the patient is being treated for wounds likely suffered as a result of criminal conduct.
- Requires dentists to provide the dental records of missing persons to law enforcement authorities where the person's family or next of kin have provided consent.

HOUSE COMMITTEE ON HEALTH CARE

Majority Report: Do pass as amended. Signed by 15 members: Representatives Cody, Chair; Campbell, Vice Chair; Morrell, Vice Chair; Hinkle, Ranking Minority Member; Curtis, Assistant Ranking Minority Member; Alexander, Appleton, Bailey, Clibborn, Condotta, Green, Lantz, Moeller, Schual-Berke and Skinner.

Staff: Chris Blake (786-7392).

Background:

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes nationwide standards for the use, disclosure, storage, and transfer of protected health information. Entities covered by HIPAA must have a patient's authorization to use or disclose health care information, unless there is a specified exception. Some exceptions pertain to

disclosures for treatment, payment, and health care operations; public health activities; judicial proceedings; law enforcement purposes; and research purposes. Among the law enforcement exceptions is a provision that allows disclosure to comply with laws requiring the reporting of certain types of wounds or other physical injuries.

In Washington, the Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA provides that a health care provider may not disclose health care information about a patient unless there is a statutory exception or a written authorization by the patient. Some exceptions include disclosures for the provision of health care; quality improvement, legal, actuarial, and administrative services; research purposes; directory information; public health and law enforcement activities as required by law; and judicial proceedings. The UHCIA's exceptions related to law enforcement apply where criminal conduct has occurred on the premises, where public authorities have brought the patient to the health care facility; or where the law requires reporting to federal, state, or local law enforcement authorities.

Summary of Amended Bill:

Health care providers must disclose a patient's health care information without his or her authorization where the patient is being treated or has been treated for specified injuries. The information must be disclosed upon written or oral request from federal, state, or local law enforcement authorities to a nursing supervisor, administrator, or designated privacy official. The disclosure requirement applies to treatment for: (1) injuries caused by the discharge of a firearm, including bullet wounds, gunshot wounds, or powder burns; (2) injuries caused by sharp or pointed instruments, including knives and ice picks, where law enforcement authorities believe the injury was intentionally inflicted; or (3) blunt force injuries that law enforcement authorities reasonably believe were the result of a criminal act.

The health care provider must provide the federal, state, or local law enforcement authorities with the patient's name, residence, sex, age, condition, diagnosis or extent and location of injuries, consciousness status when admitted, health care provider's name, transfer status, and discharge date and time.

"Federal, state, or local law enforcement authority" is defined to include officers of an agency empowered by law to investigate or prosecute alleged or potential criminal violations of law.

The dentist of a person who has been missing for more than 30 days must provide the missing person's dental records to the sheriff, chief of police, county coroner or medical examiner, or other law enforcement authority if presented with written consent from the missing person's family or next of kin. The dentist must also provide the dental records upon presentation of a statement from the sheriff, chief of police, county coroner or medical examiner, or other law enforcement authority that the missing person's family or next of kin: (1) could not be located after the exercise of due diligence; or (2) refused to consent and there is reason to believe that they may have been involved with the missing person's disappearance.

Amended Bill Compared to Engrossed Substitute Bill:

The amended bill requires that law enforcement authorities make the information request to a nursing supervisor, administrator, or designated privacy official. Requests may only be made about a single case regarding an injured patient, not multiple cases. Requests may only be made regarding the types of listed injuries.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date of Amended Bill: The bill has an emergency clause and takes effect immediately.

Testimony For: (In support) Health care providers and facilities are concerned about liability for disclosing any information about patients to law enforcement officers. This information is necessary to allow law enforcement officers to begin an investigation into a crime so that evidence is not tainted or lost. Health care providers are confused about what information they may disclose to law enforcement authorities. Most states have laws like this that require that basic information be provided to law enforcement authorities so they can have enough information to obtain a warrant. This is not a mandatory reporting bill; it requires law enforcement officers to first request the information.

(With concerns) The underlying intent of the bill is important, but the disclosure of information related to any other injuries may be too broad.

Testimony Against: (Opposed) This bill does not respect the fact that a patient does not lose his or her privacy rights simply because he or she was the victim of a crime. This bill is written very broadly to include too many types of injuries, too many types of law enforcement, and too much information.

Persons Testifying: (In support) Senator Brandland, prime sponsor; and Leo Poort and Nathan Janes, Seattle Police Department.

(With concerns) Lonnie Johns-Brown, Washington Coalition of Sexual Assault Programs.

(Opposed) Jennifer Shaw, American Civil Liberties Union of Washington State.

Persons Signed In To Testify But Not Testifying: None.