

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5158

59th Legislature
2005 Regular Session

Passed by the Senate April 19, 2005
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 5, 2005
YEAS 94 NAYS 0

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Thomas Hoemann, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5158** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5158

AS AMENDED BY THE HOUSE

Passed Legislature - 2005 Regular Session

State of Washington 59th Legislature 2005 Regular Session

By Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Brandland, Kastama, Parlette and Benson)

READ FIRST TIME 02/14/05.

1 AN ACT Relating to making certain provisions in the uniform health
2 care information act consistent with the health insurance portability
3 and accountability act privacy regulation, by addressing the period of
4 validity of an authorization, accounting for disclosures, reporting of
5 criminal activities, sharing quality improvement information, and
6 modifying provisions on payment for health care, health care
7 operations, and related definitions; and amending RCW 70.02.010,
8 70.02.020, 70.02.030, and 70.02.050.

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

10 **Sec. 1.** RCW 70.02.010 and 2002 c 318 s 1 are each amended to read
11 as follows:

12 The definitions in this section apply throughout this chapter
13 unless the context clearly requires otherwise.

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

17 (a) Statutory, regulatory, fiscal, medical, or scientific
18 standards;

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

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

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

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

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

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

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

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

21 (6) "Health care information" means any information, whether oral
22 or recorded in any form or medium, that identifies or can readily be
23 associated with the identity of a patient and directly relates to the
24 patient's health care, including a patient's deoxyribonucleic acid and
25 identified sequence of chemical base pairs. The term includes any
26 (~~record~~) required accounting of disclosures of health care
27 information.

28 (7) "Health care operations" means any of the following activities
29 of a health care provider, health care facility, or third-party payor
30 to the extent that the activities are related to functions that make an
31 entity a health care provider, a health care facility, or a third-party
32 payor:

33 (a) Conducting: Quality assessment and improvement activities,
34 including outcomes evaluation and development of clinical guidelines,
35 if the obtaining of generalizable knowledge is not the primary purpose
36 of any studies resulting from such activities; population-based
37 activities relating to improving health or reducing health care costs,

1 protocol development, case management and care coordination, contacting
2 of health care providers and patients with information about treatment
3 alternatives; and related functions that do not include treatment;

4 (b) Reviewing the competence or qualifications of health care
5 professionals, evaluating practitioner and provider performance and
6 third-party payor performance, conducting training programs in which
7 students, trainees, or practitioners in areas of health care learn
8 under supervision to practice or improve their skills as health care
9 providers, training of nonhealth care professionals, accreditation,
10 certification, licensing, or credentialing activities;

11 (c) Underwriting, premium rating, and other activities relating to
12 the creation, renewal, or replacement of a contract of health insurance
13 or health benefits, and ceding, securing, or placing a contract for
14 reinsurance of risk relating to claims for health care, including stop-
15 loss insurance and excess of loss insurance, if any applicable legal
16 requirements are met;

17 (d) Conducting or arranging for medical review, legal services, and
18 auditing functions, including fraud and abuse detection and compliance
19 programs;

20 (e) Business planning and development, such as conducting cost-
21 management and planning-related analyses related to managing and
22 operating the health care facility or third-party payor, including
23 formulary development and administration, development, or improvement
24 of methods of payment or coverage policies; and

25 (f) Business management and general administrative activities of
26 the health care facility, health care provider, or third-party payor
27 including, but not limited to:

28 (i) Management activities relating to implementation of and
29 compliance with the requirements of this chapter;

30 (ii) Customer service, including the provision of data analyses for
31 policy holders, plan sponsors, or other customers, provided that health
32 care information is not disclosed to such policy holder, plan sponsor,
33 or customer;

34 (iii) Resolution of internal grievances;

35 (iv) The sale, transfer, merger, or consolidation of all or part of
36 a health care provider, health care facility, or third-party payor with
37 another health care provider, health care facility, or third-party

1 payor or an entity that following such activity will become a health
2 care provider, health care facility, or third-party payor, and due
3 diligence related to such activity; and

4 (v) Consistent with applicable legal requirements, creating
5 deidentified health care information or a limited dataset and
6 fund-raising for the benefit of the health care provider, health care
7 facility, or third-party payor.

8 (8) "Health care provider" means a person who is licensed,
9 certified, registered, or otherwise authorized by the law of this state
10 to provide health care in the ordinary course of business or practice
11 of a profession.

12 (~~(8)~~) (9) "Institutional review board" means any board,
13 committee, or other group formally designated by an institution, or
14 authorized under federal or state law, to review, approve the
15 initiation of, or conduct periodic review of research programs to
16 assure the protection of the rights and welfare of human research
17 subjects.

18 (~~(9)~~) (10) "Maintain," as related to health care information,
19 means to hold, possess, preserve, retain, store, or control that
20 information.

21 (~~(10)~~) (11) "Patient" means an individual who receives or has
22 received health care. The term includes a deceased individual who has
23 received health care.

24 (~~(11)~~) (12) "Payment" means:

25 (a) The activities undertaken by:

26 (i) A third-party payor to obtain premiums or to determine or
27 fulfill its responsibility for coverage and provision of benefits by
28 the third-party payor; or

29 (ii) A health care provider, health care facility, or third-party
30 payor, to obtain or provide reimbursement for the provision of health
31 care; and

32 (b) The activities in (a) of this subsection that relate to the
33 patient to whom health care is provided and that include, but are not
34 limited to:

35 (i) Determinations of eligibility or coverage, including
36 coordination of benefits or the determination of cost-sharing amounts,
37 and adjudication or subrogation of health benefit claims;

1 (ii) Risk adjusting amounts due based on enrollee health status and
2 demographic characteristics;

3 (iii) Billing, claims management, collection activities, obtaining
4 payment under a contract for reinsurance, including stop-loss insurance
5 and excess of loss insurance, and related health care data processing;

6 (iv) Review of health care services with respect to medical
7 necessity, coverage under a health plan, appropriateness of care, or
8 justification of charges;

9 (v) Utilization review activities, including precertification and
10 preauthorization of services, and concurrent and retrospective review
11 of services; and

12 (vi) Disclosure to consumer reporting agencies of any of the
13 following health care information relating to collection of premiums or
14 reimbursement:

15 (A) Name and address;

16 (B) Date of birth;

17 (C) Social security number;

18 (D) Payment history;

19 (E) Account number; and

20 (F) Name and address of the health care provider, health care
21 facility, and/or third-party payor.

22 (13) "Person" means an individual, corporation, business trust,
23 estate, trust, partnership, association, joint venture, government,
24 governmental subdivision or agency, or any other legal or commercial
25 entity.

26 ~~((+12))~~ (14) "Reasonable fee" means the charges for duplicating or
27 searching the record, but shall not exceed sixty-five cents per page
28 for the first thirty pages and fifty cents per page for all other
29 pages. In addition, a clerical fee for searching and handling may be
30 charged not to exceed fifteen dollars. These amounts shall be adjusted
31 biennially in accordance with changes in the consumer price index, all
32 consumers, for Seattle-Tacoma metropolitan statistical area as
33 determined by the secretary of health. However, where editing of
34 records by a health care provider is required by statute and is done by
35 the provider personally, the fee may be the usual and customary charge
36 for a basic office visit.

37 ~~((+13))~~ (15) "Third-party payor" means an insurer regulated under
38 Title 48 RCW authorized to transact business in this state or other

1 jurisdiction, including a health care service contractor, and health
2 maintenance organization; or an employee welfare benefit plan; or a
3 state or federal health benefit program.

4 (16) "Treatment" means the provision, coordination, or management
5 of health care and related services by one or more health care
6 providers or health care facilities, including the coordination or
7 management of health care by a health care provider or health care
8 facility with a third party; consultation between health care providers
9 or health care facilities relating to a patient; or the referral of a
10 patient for health care from one health care provider or health care
11 facility to another.

12 **Sec. 2.** RCW 70.02.020 and 1993 c 448 s 2 are each amended to read
13 as follows:

14 (1) Except as authorized in RCW 70.02.050, a health care provider,
15 an individual who assists a health care provider in the delivery of
16 health care, or an agent and employee of a health care provider may not
17 disclose health care information about a patient to any other person
18 without the patient's written authorization. A disclosure made under
19 a patient's written authorization must conform to the authorization.

20 ~~((Health care providers or facilities shall chart all disclosures,~~
21 ~~except to third party payors, of health care information, such~~
22 ~~chartings to become part of the health care information.))~~

23 (2) A patient has a right to receive an accounting of disclosures
24 of health care information made by a health care provider or a health
25 care facility in the six years before the date on which the accounting
26 is requested, except for disclosures:

- 27 (a) To carry out treatment, payment, and health care operations;
28 (b) To the patient of health care information about him or her;
29 (c) Incident to a use or disclosure that is otherwise permitted or
30 required;
31 (d) Pursuant to an authorization where the patient authorized the
32 disclosure of health care information about himself or herself;
33 (e) Of directory information;
34 (f) To persons involved in the patient's care;
35 (g) For national security or intelligence purposes if an accounting
36 of disclosures is not permitted by law;

1 (h) To correctional institutions or law enforcement officials if an
2 accounting of disclosures is not permitted by law; and

3 (i) Of a limited data set that excludes direct identifiers of the
4 patient or of relatives, employers, or household members of the
5 patient.

6 **Sec. 3.** RCW 70.02.030 and 2004 c 166 s 19 are each amended to read
7 as follows:

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

14 (2) A health care provider or health care facility may charge a
15 reasonable fee for providing the health care information and is not
16 required to honor an authorization until the fee is paid.

17 (3) To be valid, a disclosure authorization to a health care
18 provider or health care facility shall:

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

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

21 (c) Identify the name(~~(, address,)~~) and institutional affiliation
22 of the person or class of persons to whom the information is to be
23 disclosed;

24 (d) (~~(Except for third party payers,)~~) Identify the provider or
25 class of providers who (~~(is)~~) are to make the disclosure; (~~(and)~~)

26 (e) Identify the patient; and

27 (f) Contain an expiration date or an expiration event that relates
28 to the patient or the purpose of the use or disclosure.

29 (4) Unless disclosure without authorization is otherwise permitted
30 under RCW 70.02.050 or the federal health insurance portability and
31 accountability act of 1996 and its implementing regulations, an
32 authorization may permit the disclosure of health care information to
33 a class of persons that includes:

34 (a) Researchers if the health care provider or health care facility
35 obtains the informed consent for the use of the patient's health care
36 information for research purposes; or

1 (b) Third-party payors if the information is only disclosed for
2 payment purposes.

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

6 ~~((+5))~~ (6) When an authorization permits the disclosure of health
7 care information to a financial institution or an employer of the
8 patient for purposes other than payment, the authorization as it
9 pertains to those disclosures shall expire ninety days after the
10 signing of the authorization, unless the authorization is renewed by
11 the patient.

12 (7) A health care provider or health care facility shall retain the
13 original or a copy of each authorization or revocation in conjunction
14 with any health care information from which disclosures are made.
15 ~~((This requirement shall not apply to disclosures to third party~~
16 ~~payors.~~

17 ~~(6) Except for authorizations given pursuant to an agreement with~~
18 ~~a treatment or monitoring program or disciplinary authority under~~
19 ~~chapter 18.71 or 18.130 RCW, when the patient is under the supervision~~
20 ~~of the department of corrections, or to provide information to third-~~
21 ~~party payors, an authorization may not permit the release of health~~
22 ~~care information relating to future health care that the patient~~
23 ~~receives more than ninety days after the authorization was signed.~~
24 ~~Patients shall be advised of the period of validity of their~~
25 ~~authorization on the disclosure authorization form. If the~~
26 ~~authorization does not contain an expiration date and the patient is~~
27 ~~not under the supervision of the department of corrections, it expires~~
28 ~~ninety days after it is signed.~~

29 ~~(7))~~ (8) Where the patient is under the supervision of the
30 department of corrections, an authorization signed pursuant to this
31 section for health care information related to mental health or drug or
32 alcohol treatment expires at the end of the term of supervision, unless
33 the patient is part of a treatment program that requires the continued
34 exchange of information until the end of the period of treatment.

35 **Sec. 4.** RCW 70.02.050 and 1998 c 158 s 1 are each amended to read
36 as follows:

37 (1) A health care provider or health care facility may disclose

1 health care information about a patient without the patient's
2 authorization to the extent a recipient needs to know the information,
3 if the disclosure is:

4 (a) To a person who the provider or facility reasonably believes is
5 providing health care to the patient;

6 (b) To any other person who requires health care information for
7 health care education, or to provide planning, quality assurance, peer
8 review, or administrative, legal, financial, ~~((or))~~ actuarial services
9 to, or other health care operations for or on behalf of the health care
10 provider or health care facility; or for assisting the health care
11 provider or health care facility in the delivery of health care and the
12 health care provider or health care facility reasonably believes that
13 the person:

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

16 (ii) Will take appropriate steps to protect the health care
17 information;

18 (c) To any other health care provider or health care facility
19 reasonably believed to have previously provided health care to the
20 patient, to the extent necessary to provide health care to the patient,
21 unless the patient has instructed the health care provider or health
22 care facility in writing not to make the disclosure;

23 (d) To any person if the health care provider or health care
24 facility reasonably believes that disclosure will avoid or minimize an
25 imminent danger to the health or safety of the patient or any other
26 individual, however there is no obligation under this chapter on the
27 part of the provider or facility to so disclose;

28 (e) ~~((Oral, and made))~~ To immediate family members of the patient,
29 or any other individual with whom the patient is known to have a close
30 personal relationship, if made in accordance with good medical or other
31 professional practice, unless the patient has instructed the health
32 care provider or health care facility in writing not to make the
33 disclosure;

34 (f) To a health care provider or health care facility who is the
35 successor in interest to the health care provider or health care
36 facility maintaining the health care information;

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

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

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

5 (iii) Contains reasonable safeguards to protect the information
6 from redisclosure;

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

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

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

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

20 (ii) Not to disclose the information further, except to accomplish
21 the audit or report unlawful or improper conduct involving fraud in
22 payment for health care by a health care provider or patient, or other
23 unlawful conduct by the health care provider;

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

26 (j) To provide directory information, unless the patient has
27 instructed the health care provider or health care facility not to make
28 the disclosure;

29 ~~((In the case of a hospital or health care provider to provide,~~
30 ~~in cases reported by)) To fire, police, sheriff, or ~~((other))~~ another
31 public authority, that brought, or caused to be brought, the patient to
32 the health care facility or health care provider if the disclosure is
33 limited to the patient's name, residence, sex, age, occupation,
34 condition, diagnosis, estimated or actual discharge date, or extent and
35 location of injuries as determined by a physician, and whether the
36 patient was conscious when admitted;~~

37 (l) To federal, state, or local law enforcement authorities and the
38 health care provider, health care facility, or third-party payor

1 believes in good faith that the health care information disclosed
2 constitutes evidence of criminal conduct that occurred on the premises
3 of the health care provider, health care facility, or third-party
4 payor;

5 (m) To another health care provider, health care facility, or
6 third-party payor for the health care operations of the health care
7 provider, health care facility, or third-party payor that receives the
8 information, if each entity has or had a relationship with the patient
9 who is the subject of the health care information being requested, the
10 health care information pertains to such relationship, and the
11 disclosure is for the purposes described in RCW 70.02.010(7) (a) and
12 (b); or

13 (n) For payment.

14 (2) A health care provider shall disclose health care information
15 about a patient without the patient's authorization if the disclosure
16 is:

17 (a) To federal, state, or local public health authorities, to the
18 extent the health care provider is required by law to report health
19 care information; when needed to determine compliance with state or
20 federal licensure, certification or registration rules or laws; or when
21 needed to protect the public health;

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

24 (c) To county coroners and medical examiners for the investigations
25 of deaths;

26 (d) Pursuant to compulsory process in accordance with RCW
27 70.02.060.

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

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