

# HOUSE BILL REPORT

## SHB 1043

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### As Amended by the Senate

**Title:** An act relating to nonpublic personal health information.

**Brief Description:** Addressing nonpublic personal health information.

**Sponsors:** House Committee on Health Care & Wellness (originally sponsored by Representatives Robinson, Harris, Clibborn, Riccelli, Cody, Jinkins, Tharinger, Appleton and Sawyer; by request of Insurance Commissioner).

#### **Brief History:**

##### **Committee Activity:**

Health Care & Wellness: 1/18/17, 1/31/17 [DPS].

##### **Floor Activity:**

Passed House: 3/6/17, 97-1.

Senate Amended.

Passed Senate: 4/10/17, 47-0.

#### **Brief Summary of Substitute Bill**

- Provides that nonpublic personal health information in the custody of the Insurance Commissioner is confidential and not subject to public disclosure.

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### HOUSE COMMITTEE ON HEALTH CARE & WELLNESS

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 15 members: Representatives Cody, Chair; Macri, Vice Chair; Graves, Assistant Ranking Minority Member; Caldier, Clibborn, DeBolt, Harris, Jinkins, MacEwen, Riccelli, Robinson, Rodne, Slatter, Stonier and Tharinger.

**Minority Report:** Do not pass. Signed by 1 member: Representative Schmick, Ranking Minority Member.

**Staff:** Alexa Silver (786-7190).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

### Disclosure of Public Records.

The Public Records Act (PRA) requires state and local agencies to make all public records available for public inspection and copying, unless a record falls within an exemption in the PRA or another statute that exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests, an agency must delete identifying details when it makes a public record available. A person's right to privacy is violated only if disclosure would be highly offensive to a reasonable person and is not of legitimate concern to the public. The PRA is liberally construed and its exemptions narrowly construed. If the PRA conflicts with any other law, the provisions of the PRA govern.

The PRA provides exemptions from disclosure for certain health care information, such as: (1) health information obtained under specified circumstances by the Pharmacy Quality Assurance Commission, the Department of Health, and quality improvement committees; (2) claims data provided to the all-payer claims database; and (3) complaints under the Uniform Disciplinary Act. In addition, the PRA provides exemptions for certain information filed with the Insurance Commissioner under the insurance code, including confidential or privileged information provided by: (1) the National Association of Insurance Commissioners; (2) regulatory or law enforcement officials of other states and nations, the federal government, or international authorities; or (3) state agencies.

### Confidentiality of Health Care Information.

The federal Health Insurance Portability and Accountability Act establishes standards for the disclosure of protected health information by covered entities (*i.e.*, health plans, health care clearinghouses, and certain health care providers) and their business associates. The state Uniform Health Care Information Act governs the disclosure of health care information by health care providers and their agents or employees.

### **Summary of Substitute Bill:**

All nonpublic personal health information obtained by, disclosed to, or in the custody of the Insurance Commissioner (Commissioner) is confidential and not subject to public disclosure under the Public Records Act (PRA), regardless of the form of the information. The Commissioner may not disclose nonpublic personal health information, except in furtherance of regulatory or legal action brought as part of his or her official duties.

The Commissioner may share information with the National Association of Insurance Commissioners, regulatory and law enforcement officials, the federal government, and international authorities if the recipient agrees to maintain confidentiality. The Commissioner may receive information from these entities and must maintain the information as confidential or privileged under the laws of the jurisdiction that is the source of the information. No waiver of a claim of confidentiality or privilege occurs as a result of this authorized disclosure or sharing. The Commissioner may enter into agreements on the sharing and use of information.

"Nonpublic personal health information" means health information: (1) that identifies an individual who is the subject of the information; or (2) with respect to which there is a reasonable basis to believe the information could be used to identify an individual. "Health

information" means information or data (other than age or gender), whether oral or recorded, created by or derived from a health care provider, patient, policyholder, or enrollee, that relates to: (1) an individual's past, present, or future physical, mental, or behavioral health or condition; or (2) the provision of or payment for the provision of health care to an individual. "Health care" means preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care services, procedures, tests, or counseling that: (1) relates to the physical, mental, or behavioral health condition of an individual; (2) affects the structure or function of the human body or any part of the human body, including blood, sperm, organ, or other tissue banking; or (3) prescribes, dispenses, or furnishes to an individual drugs, biologicals, medical devices, or health care equipment and supplies.

**EFFECT OF SENATE AMENDMENT(S):**

The Senate amendment requires the Insurance Commissioner to obtain patient consent before releasing any nonpublic personal health information. It requires the consent form to indicate what information is being shared and for what purpose.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Health information is currently only protected by law in the doctor's office and with the insurance company. It is surprising to learn that health information in the possession of the Insurance Commissioner (Commissioner) is not protected by the Health Insurance Portability and Accountability Act (HIPAA) and is subject to disclosure. Providers are reluctant to recommend filing a complaint with the Commissioner, which is the consumer advocate. Providing a disclaimer to consumers filing a complaint has a chilling effect, especially for certain categories of health care services. Not treating information with confidentiality and respect can also deter patients from seeking care. Health plans are sensitive to the personal nature of health care information and are required to cooperate with investigations. Protection of patient health information is important in establishing trust between the doctor and patient.

(Opposed) None.

(Other) This bill uses the same terms as HIPAA and the Uniform Health Care Information Act but provides different definitions.

**Persons Testifying:** (In support) Representative Robinson, prime sponsor; Lonnie Johns-Brown, Office of the Insurance Commissioner; Melanie Smith, Washington State Society for Clinical Social Workers; Steve Breaux, Planned Parenthood Votes Northwest and Hawaii; Mel Sorenson, America's Health Insurance Plans; Katie Kolan, Washington State Medical Association; and Dave Knutson, Association of Washington Healthcare Plans.

(Other) Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** None.