

# SENATE BILL REPORT

## SB 5124

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As of January 25, 2017

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

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

**Sponsors:** Senators Rivers, Cleveland, Keiser and Kuderer; by request of Insurance Commissioner.

**Brief History:**

**Committee Activity:** Health Care: 1/24/17.

**Brief Summary of 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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### SENATE COMMITTEE ON HEALTH CARE

**Staff:** Mich'l Needham (786-7442)

**Background:** 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 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

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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, such as 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 Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** 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, 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 obtained by, disclosed to, or in the custody of the Commissioner is added to the list of insurance information exempt from public disclosure.

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.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Substitute:** PRO: The OIC wants to protect personal health care information but some of it is not protected today. For example, consumers provide detailed complaint information and they sign a disclosure form that indicates we may not be able to protect the information. This bill would allow us to maintain the information and protect the private health information. The mental health professions brought this to the attention of the OIC since mental health information can be particularly sensitive and we are grateful for the proposal to protect the information. Confidentiality is a core duty of a health care provider and we want to ensure the private health information is held confidential.

OTHER: We have been working with OIC on one small technical correction to clarify that the definitions are separate from the definitions provided in RCW 70.02 which link health information with the federal Health Insurance Portability and Accountability Act (known as HIPAA).

**Persons Testifying:** PRO: Senator Ann Rivers, Prime Sponsor; Laura Groshan, Washington Society for Clinical Social Workers; Katie Kolan, Washington State Medical Association; Lonnie Johns-Brown, Office of the Insurance Commissioner.

OTHER: Lisa Thatcher, Washington State Hospital Association.

**Persons Signed In To Testify But Not Testifying:** No one.