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ENGROSSED SUBSTITUTE HOUSE BILL 2568

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State of Washington                      52nd Legislature                      1992 Regular Session

By House Committee on Health Care (originally sponsored by  
Representatives Appelwick, Morris, Moyer and Paris)

Read first time 02/07/92.

1            AN ACT Relating to public records; and amending RCW 70.02.010,  
2 70.02.020, 70.02.030, 70.02.050, 70.02.060, and 70.02.080.

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

4            **Sec. 1.** RCW 70.02.010 and 1991 c 335 s 102 are each amended to  
5 read as follows:

6            As used in this chapter, unless the context otherwise requires:

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

10            (a) Statutory, regulatory, fiscal, medical, or scientific  
11 standards;

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

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

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

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

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

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

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

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

17 (6) "Health care information" means any information, whether oral  
18 or recorded in any form or medium, that identifies or can readily be  
19 associated with the identity of a patient and directly relates to the  
20 patient's health care. The term includes any record of disclosures of  
21 health care information.

22 (7) "Health care provider" means a person who is licensed,  
23 certified, registered, or otherwise authorized by the law of this state  
24 to provide health care in the ordinary course of business or practice  
25 of a profession.

26 (8) "Institutional review board" means any board, committee, or  
27 other group formally designated by an institution, or authorized under  
28 federal or state law, to review, approve the initiation of, or conduct  
29 periodic review of research programs to assure the protection of the  
30 rights and welfare of human research subjects.

1 (9) "Maintain," as related to health care information, means to  
2 hold, possess, preserve, retain, store, or control that information.

3 (10) "Patient" means an individual who receives or has received  
4 health care. The term includes a deceased individual who has received  
5 health care.

6 (11) "Person" means an individual, corporation, business trust,  
7 estate, trust, partnership, association, joint venture, government,  
8 governmental subdivision or agency, or any other legal or commercial  
9 entity.

10 (12) "Reasonable fee" means the charges for duplicating or  
11 searching the record specified in RCW 36.18.020 (8) or (16),  
12 respectively, but shall not exceed the health care provider's actual  
13 cost. However, where editing of records by a health care provider is  
14 required by statute and is done by the provider personally, the fee may  
15 be the usual and customary charge for a basic office visit.

16 (13) "Third-party payor" means an entity regulated under Title 48  
17 RCW authorized to transact business in this state or other  
18 jurisdiction, including a health care service contractor, and health  
19 maintenance organization; or an employee welfare benefit plan; or a  
20 state or federal health benefit program.

21 **Sec. 2.** RCW 70.02.020 and 1991 c 335 s 201 are each amended to  
22 read as follows:

23 Except as authorized in RCW 70.02.050, a health care provider, an  
24 individual who assists a health care provider in the delivery of health  
25 care, or an agent and employee of a health care provider may not  
26 disclose health care information about a patient to any other person  
27 without the patient's written authorization. A disclosure made under  
28 a patient's written authorization must conform to the authorization.

1 Health care providers or facilities shall chart all disclosures,  
2 except to third-party ((health—care)) payors, of health care  
3 information, such chartings to become part of the health care  
4 information.

5 **Sec. 3.** RCW 70.02.030 and 1991 c 335 s 202 are each amended to  
6 read as follows:

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

12 (2) A health care provider may charge a reasonable fee((~~—not to~~  
13 ~~exceed the health care provider's actual cost~~)) for providing the  
14 health care information((~~—~~)) and is not required to honor an  
15 authorization until the fee is paid.

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

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

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

20 (c) Identify the name, address, and institutional affiliation of  
21 the person to whom the information is to be disclosed;

22 (d) Except for third-party payors, identify the provider who is to  
23 make the disclosure; and

24 (e) Identify the patient.

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

28 (5) A health care provider shall retain each authorization or  
29 revocation in conjunction with any health care information from which

1 disclosures are made. This requirement shall not apply to disclosures  
2 to third-party ((health care)) payors.

3 (6) Except for authorizations to provide information to third-party  
4 ((health care)) payors, an authorization may not permit the release of  
5 health care information relating to future health care that the patient  
6 receives more than ninety days after the authorization was signed.  
7 Patients shall be advised of the period of validity of their  
8 authorization on the disclosure authorization form. If the  
9 authorization does not contain an expiration date, it expires ninety  
10 days after it is signed.

11 ~~((7) Except for authorizations to provide information to third-~~  
12 ~~party health payors, an authorization in effect on July 28, 1991,~~  
13 ~~remains valid for six months after July 28, 1991, unless an earlier~~  
14 ~~date is specified or it is revoked under RCW 70.02.040. Health care~~  
15 ~~information disclosed under such an authorization is otherwise subject~~  
16 ~~to this chapter. An authorization written after July 28, 1991, becomes~~  
17 ~~invalid after the expiration date contained in the authorization, which~~  
18 ~~may not exceed ninety days. If the authorization does not contain an~~  
19 ~~expiration date, it expires ninety days after it is signed.))~~

20 **Sec. 4.** RCW 70.02.050 and 1991 c 335 s 204 are each amended to  
21 read as follows:

22 (1) A health care provider may disclose health care information  
23 about a patient without the patient's authorization to the extent a  
24 recipient needs to know the information, if the disclosure is:

25 (a) To a person who the provider reasonably believes is providing  
26 health care to the patient;

27 (b) To any other person who requires health care information for  
28 health care education, or to provide planning, quality assurance, peer  
29 review, or administrative, legal, financial, or actuarial services to

1 the health care provider; or for assisting the health care provider in  
2 the delivery of health care and the health care provider reasonably  
3 believes that the person:

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

6 (ii) Will take appropriate steps to protect the health care  
7 information;

8 (c) To any other health care provider reasonably believed to have  
9 previously provided health care to the patient, to the extent necessary  
10 to provide health care to the patient, unless the patient has  
11 instructed the health care provider in writing not to make the  
12 disclosure;

13 (d) To any person if the health care provider reasonably believes  
14 that disclosure will avoid or minimize an imminent danger to the health  
15 or safety of the patient or any other individual, however there is no  
16 obligation under this chapter on the part of the provider to so  
17 disclose;

18 (e) Oral, and made to immediate family members of the patient, or  
19 any other individual with whom the patient is known to have a close  
20 personal relationship, if made in accordance with good medical or other  
21 professional practice, unless the patient has instructed the health  
22 care provider in writing not to make the disclosure;

23 (f) To a health care provider who is the successor in interest to  
24 the health care provider maintaining the health care information;

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

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

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

1 (iii) Contains reasonable safeguards to protect the information  
2 from redisclosure;

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

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

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

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

16 (ii) Not to disclose the information further, except to accomplish  
17 the audit or report unlawful or improper conduct involving fraud in  
18 payment for health care by a health care provider or patient, or other  
19 unlawful conduct by the health care provider;

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

22 (j) To provide directory information, unless the patient has  
23 instructed the health care provider not to make the disclosure;

24 (k) To provide, in cases of public record, name, residence, sex,  
25 age, occupation, condition, diagnosis or extent and location of  
26 injuries as determined by a physician, and whether the patient was  
27 conscious when admitted.

28 (2) A health care provider shall disclose health care information  
29 about a patient without the patient's authorization if the disclosure  
30 is:

1 (a) To federal, state, or local public health authorities, to the  
2 extent the health care provider is required by law to report health  
3 care information; when needed to determine compliance with state or  
4 federal licensure, certification or registration rules or laws; or when  
5 needed to protect the public health;

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

8 (c) Pursuant to compulsory process in accordance with RCW  
9 70.02.060.

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

14 **Sec. 5.** RCW 70.02.060 and 1991 c 335 s 205 are each amended to  
15 read as follows:

16 (1) Before service of a discovery request or compulsory process on  
17 a health care provider for health care information, an attorney shall  
18 provide advance notice to the health care provider and the patient or  
19 the patient's attorney involved through service of process or first  
20 class mail, indicating the health care provider from whom the  
21 information is sought, what health care information is sought, and the  
22 date by which a protective order must be obtained to prevent the health  
23 care provider from complying. Such date shall give the patient and the  
24 health care provider adequate time to seek a protective order, but in  
25 no event be less than fourteen days since the date of service or  
26 delivery to the patient and the health care provider of the foregoing.  
27 Thereafter the request for discovery or compulsory process shall be  
28 served on the health care provider.

1 (2) Without the written consent of the patient, the health care  
2 provider may not disclose the health care information sought under  
3 subsection (1) of this section if the requestor has not complied with  
4 the requirements of subsection (1) of this section. In the absence of  
5 a protective order issued by a court of competent jurisdiction  
6 forbidding compliance, the health care provider shall disclose the  
7 information in accordance with this chapter. In the case of  
8 compliance, the request for discovery or compulsory process shall be  
9 made a part of the patient record.

10 (3) Production of health care information under this section, in  
11 and of itself, does not constitute a waiver of any privilege,  
12 objection, or defense existing under other law or rule of evidence or  
13 procedure.

14 (4) The health care provider may charge a reasonable fee for  
15 providing the health care information.

16 **Sec. 6.** RCW 70.02.080 and 1991 c 335 s 301 are each amended to  
17 read as follows:

18 (1) Upon receipt of a written request from a patient to examine or  
19 copy all or part of the patient's recorded health care information, a  
20 health care provider, as promptly as required under the circumstances,  
21 but no later than fifteen working days after receiving the request  
22 shall:

23 (a) Make the information available for examination during regular  
24 business hours and provide a copy, if requested, to the patient;

25 (b) Inform the patient if the information does not exist or cannot  
26 be found;

27 (c) If the health care provider does not maintain a record of the  
28 information, inform the patient and provide the name and address, if  
29 known, of the health care provider who maintains the record;

1 (d) If the information is in use or unusual circumstances have  
2 delayed handling the request, inform the patient and specify in writing  
3 the reasons for the delay and the earliest date, not later than twenty-  
4 one working days after receiving the request, when the information will  
5 be available for examination or copying or when the request will be  
6 otherwise disposed of; or

7 (e) Deny the request, in whole or in part, under RCW 70.02.090 and  
8 inform the patient.

9 (2) Upon request, the health care provider shall provide an  
10 explanation of any code or abbreviation used in the health care  
11 information. If a record of the particular health care information  
12 requested is not maintained by the health care provider in the  
13 requested form, the health care provider is not required to create a  
14 new record or reformulate an existing record to make the health care  
15 information available in the requested form. The health care provider  
16 may charge a reasonable fee(~~(, not to exceed the health care provider's~~  
17 ~~actual cost,)) for providing the health care information and is not  
18 required to permit examination or copying until the fee is paid.~~