

ESSB 5158 - H COMM AMD
By Committee on Health Care

ADOPTED AS AMENDED 4/5/05

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.02.010 and 2002 c 318 s 1 are each amended to read
4 as follows:

5 The definitions in this section apply throughout this chapter
6 unless the context clearly requires otherwise.

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.

15 (2) "Directory information" means information disclosing the
16 presence, and for the purpose of identification, the name, (~~residence,~~
17 ~~sex~~) location within a health care facility, and the general health
18 condition of a particular patient who is a patient in a health care
19 facility or who is currently receiving emergency health care in a
20 health care facility.

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

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

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

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

29 (5) "Health care facility" means a hospital, clinic, nursing home,

1 laboratory, office, or similar place where a health care provider
2 provides health care to patients.

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

10 (7) "Health care operations" means any of the following activities
11 of a health care provider, health care facility, or third-party payor
12 to the extent that the activities are related to functions that make an
13 entity a health care provider, a health care facility, or a third-party
14 payor:

15 (a) Conducting: Quality assessment and improvement activities,
16 including outcomes evaluation and development of clinical guidelines,
17 if the obtaining of generalizable knowledge is not the primary purpose
18 of any studies resulting from such activities; population-based
19 activities relating to improving health or reducing health care costs,
20 protocol development, case management and care coordination, contacting
21 of health care providers and patients with information about treatment
22 alternatives; and related functions that do not include treatment;

23 (b) Reviewing the competence or qualifications of health care
24 professionals, evaluating practitioner and provider performance and
25 third-party payor performance, conducting training programs in which
26 students, trainees, or practitioners in areas of health care learn
27 under supervision to practice or improve their skills as health care
28 providers, training of nonhealth care professionals, accreditation,
29 certification, licensing, or credentialing activities;

30 (c) Underwriting, premium rating, and other activities relating to
31 the creation, renewal, or replacement of a contract of health insurance
32 or health benefits, and ceding, securing, or placing a contract for
33 reinsurance of risk relating to claims for health care, including stop-
34 loss insurance and excess of loss insurance, if any applicable legal
35 requirements are met;

36 (d) Conducting or arranging for medical review, legal services, and
37 auditing functions, including fraud and abuse detection and compliance
38 programs;

1 (e) Business planning and development, such as conducting cost-
2 management and planning-related analyses related to managing and
3 operating the health care facility or third-party payor, including
4 formulary development and administration, development, or improvement
5 of methods of payment or coverage policies; and

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

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

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

15 (iii) Resolution of internal grievances;

16 (iv) The sale, transfer, merger, or consolidation of all or part of
17 a health care provider, health care facility, or third-party payor with
18 another health care provider, health care facility, or third-party
19 payor or an entity that following such activity will become a health
20 care provider, health care facility, or third-party payor, and due
21 diligence related to such activity; and

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

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

30 ~~((+8))~~ (9) "Institutional review board" means any board,
31 committee, or other group formally designated by an institution, or
32 authorized under federal or state law, to review, approve the
33 initiation of, or conduct periodic review of research programs to
34 assure the protection of the rights and welfare of human research
35 subjects.

36 ~~((+9))~~ (10) "Maintain," as related to health care information,
37 means to hold, possess, preserve, retain, store, or control that
38 information.

1 ~~((10))~~ (11) "Patient" means an individual who receives or has
2 received health care. The term includes a deceased individual who has
3 received health care.

4 ~~((11))~~ (12) "Payment" means:

5 (a) The activities undertaken by:

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

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

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

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

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

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

23 (iv) Review of health care services with respect to medical
24 necessity, coverage under a health plan, appropriateness of care, or
25 justification of charges;

26 (v) Utilization review activities, including precertification and
27 preauthorization of services, and concurrent and retrospective review
28 of services; and

29 (vi) Disclosure to consumer reporting agencies of any of the
30 following health care information relating to collection of premiums or
31 reimbursement:

32 (A) Name and address;

33 (B) Date of birth;

34 (C) Social security number;

35 (D) Payment history;

36 (E) Account number; and

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

1 (13) "Person" means an individual, corporation, business trust,
2 estate, trust, partnership, association, joint venture, government,
3 governmental subdivision or agency, or any other legal or commercial
4 entity.

5 ~~((12))~~ (14) "Reasonable fee" means the charges for duplicating or
6 searching the record, but shall not exceed sixty-five cents per page
7 for the first thirty pages and fifty cents per page for all other
8 pages. In addition, a clerical fee for searching and handling may be
9 charged not to exceed fifteen dollars. These amounts shall be adjusted
10 biennially in accordance with changes in the consumer price index, all
11 consumers, for Seattle-Tacoma metropolitan statistical area as
12 determined by the secretary of health. However, where editing of
13 records by a health care provider is required by statute and is done by
14 the provider personally, the fee may be the usual and customary charge
15 for a basic office visit.

16 ~~((13))~~ (15) "Third-party payor" means an insurer regulated under
17 Title 48 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 (16) "Treatment" means the provision, coordination, or management
22 of health care and related services by one or more health care
23 providers or health care facilities, including the coordination or
24 management of health care by a health care provider or health care
25 facility with a third party; consultation between health care providers
26 or health care facilities relating to a patient; or the referral of a
27 patient for health care from one health care provider or health care
28 facility to another.

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

31 (1) Except as authorized in RCW 70.02.050, a health care provider,
32 an individual who assists a health care provider in the delivery of
33 health care, or an agent and employee of a health care provider may not
34 disclose health care information about a patient to any other person
35 without the patient's written authorization. A disclosure made under
36 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 payors, of health care information, such~~
3 ~~chartings to become part of the health care information.))~~

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

8 (a) To carry out treatment, payment, and health care operations;

9 (b) To the patient of health care information about him or her;

10 (c) Incident to a use or disclosure that is otherwise permitted or
11 required;

12 (d) Pursuant to an authorization where the patient authorized the
13 disclosure of health care information about himself or herself;

14 (e) Of directory information;

15 (f) To persons involved in the patient's care;

16 (g) For national security or intelligence purposes if an accounting
17 of disclosures is not permitted by law;

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

20 (i) Of a limited data set that excludes direct identifiers of the
21 patient or of relatives, employers, or household members of the
22 patient.

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

25 (1) A patient may authorize a health care provider or health care
26 facility to disclose the patient's health care information. A health
27 care provider or health care facility shall honor an authorization and,
28 if requested, provide a copy of the recorded health care information
29 unless the health care provider or health care facility denies the
30 patient access to health care information under RCW 70.02.090.

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

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

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

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

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

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

6 (e) Identify the patient; and

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

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

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

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

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

22 (~~(+5)~~) (6) When an authorization permits the disclosure of health
23 care information to a financial institution or an employer of the
24 patient for purposes other than payment, the authorization as it
25 pertains to those disclosures shall expire ninety days after the
26 signing of the authorization, unless the authorization is renewed by
27 the patient.

28 (7) A health care provider or health care facility shall retain the
29 original or a copy of each authorization or revocation in conjunction
30 with any health care information from which disclosures are made.
31 (~~(This requirement shall not apply to disclosures to third party~~
32 ~~payors.~~

33 (~~(6) Except for authorizations given pursuant to an agreement with~~
34 ~~a treatment or monitoring program or disciplinary authority under~~
35 ~~chapter 18.71 or 18.130 RCW, when the patient is under the supervision~~
36 ~~of the department of corrections, or to provide information to third-~~
37 ~~party payors, an authorization may not permit the release of health~~
38 ~~care information relating to future health care that the patient~~

1 receives more than ninety days after the authorization was signed.
2 Patients shall be advised of the period of validity of their
3 authorization on the disclosure authorization form. If the
4 authorization does not contain an expiration date and the patient is
5 not under the supervision of the department of corrections, it expires
6 ninety days after it is signed.

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

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

15 (1) A health care provider or health care facility may disclose
16 health care information about a patient without the patient's
17 authorization to the extent a recipient needs to know the information,
18 if the disclosure is:

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

21 (b) To any other person who requires health care information for
22 health care education, or to provide planning, quality assurance, peer
23 review, or administrative, legal, financial, ((or)) actuarial services
24 to, or other health care operations for or on behalf of the health care
25 provider or health care facility; or for assisting the health care
26 provider or health care facility in the delivery of health care and the
27 health care provider or health care facility reasonably believes that
28 the person:

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

31 (ii) Will take appropriate steps to protect the health care
32 information;

33 (c) To any other health care provider or health care facility
34 reasonably believed to have previously provided health care to the
35 patient, to the extent necessary to provide health care to the patient,
36 unless the patient has instructed the health care provider or health
37 care facility in writing not to make the disclosure;

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

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

12 (f) To a health care provider or health care facility who is the
13 successor in interest to the health care provider or health care
14 facility maintaining the health care information;

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

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

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

21 (iii) Contains reasonable safeguards to protect the information
22 from redisclosure;

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

26 (v) Contains procedures to remove or destroy at the earliest
27 opportunity, consistent with the purposes of the project, information
28 that would enable the patient to be identified, unless an institutional
29 review board authorizes retention of identifying information for
30 purposes of another research project;

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

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

36 (ii) Not to disclose the information further, except to accomplish
37 the audit or report unlawful or improper conduct involving fraud in

1 payment for health care by a health care provider or patient, or other
2 unlawful conduct by the health care provider;

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

5 (j) To provide directory information, unless the patient has
6 instructed the health care provider or health care facility not to make
7 the disclosure;

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

16 (l) To federal, state, or local law enforcement authorities and the
17 health care provider, health care facility, or third-party payor
18 believes in good faith that the health care information disclosed
19 constitutes evidence of criminal conduct that occurred on the premises
20 of the health care provider, health care facility, or third-party
21 payor;

22 (m) To another health care provider, health care facility, or
23 third-party payor for the health care operations of the health care
24 provider, health care facility, or third-party payor that receives the
25 information, if each entity has or had a relationship with the patient
26 who is the subject of the health care information being requested, the
27 health care information pertains to such relationship, and the
28 disclosure is for the purposes described in RCW 70.02.010(7) (a) and
29 (b); or

30 (n) For payment.

31 (2) A health care provider shall disclose health care information
32 about a patient without the patient's authorization if the disclosure
33 is:

34 (a) To federal, state, or local public health authorities, to the
35 extent the health care provider is required by law to report health
36 care information; when needed to determine compliance with state or
37 federal licensure, certification or registration rules or laws; or when
38 needed to protect the public health;

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

3 (c) To county coroners and medical examiners for the investigations
4 of deaths;

5 (d) Pursuant to compulsory process in accordance with RCW
6 70.02.060.

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

11 Correct the title.

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