

HOUSE BILL REPORT

SB 5421

As Passed House:

March 24, 2023

Title: An act relating to exempting benefit enrollment information collected and maintained by the health care authority from public inspection and copying under the public records act.

Brief Description: Exempting benefit enrollment information collected and maintained by the health care authority from public inspection and copying under the public records act.

Sponsors: Senators Conway and Van De Wege.

Brief History:

Committee Activity:

State Government & Tribal Relations: 3/15/23, 3/22/23 [DP].

Floor Activity:

Passed House: 3/24/23, 94-2.

Brief Summary of Bill

- Exempts from disclosure under the Public Records Act benefit enrollment information, such as personal and demographic information and certain documents collected and maintained by the Health Care Authority as director of the Public Employees Benefits Board and the School Employees Benefits Board.

HOUSE COMMITTEE ON STATE GOVERNMENT & TRIBAL RELATIONS

Majority Report: Do pass. Signed by 7 members: Representatives Ramos, Chair; Stearns, Vice Chair; Abbarno, Ranking Minority Member; Christian, Assistant Ranking Minority Member; Gregerson, Low and Mena.

Staff: Desiree Omli (786-7105).

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

Background:

The Public Records Act.

The Public Records Act (PRA), enacted in 1972 as part of Initiative 276, requires that all state and local governmental entities make all public records available to the public unless a specific exemption applies or disclosure is prohibited. Public records are records prepared or retained by a governmental entity that relate to the conduct of government or the performance of governmental or proprietary functions. The PRA must be liberally construed; any exemptions to the disclosure requirement must be interpreted narrowly. Unless statute designates certain information or records as confidential and prohibits disclosure, exemptions are permissive, meaning that an agency, although not required to disclose, has the discretion to provide an exempt record. Exemptions under the PRA are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be redacted from the requested records.

Employment and Licensing Information.

Certain employment and licensing information is exempt from disclosure under the PRA. Examples of the exemptions include specific information of agency employees or volunteers, or their dependents, held by any public agency in personnel records, public employment records, volunteer rosters, or included in any mailing list of employees or volunteers such as:

- residential addresses;
- residential telephone numbers;
- personal wireless telephone numbers;
- personal email addresses;
- social security numbers;
- driver's license numbers;
- identicard numbers;
- payroll deductions including the amount and identification of the deduction; and
- emergency contact information.

Additional exempt information includes voluntarily submitted information collected and maintained by a state agency or higher education institution that identifies an individual state employee's personal demographic details, defined as race or ethnicity, sexual orientation, immigration status, national origin, or status as a person with a disability. This exemption does not prevent the release of state employee demographic information in a deidentified or aggregate format.

Disclosure of Health Information.

Under federal law, the Health Insurance Portability and Accountability Act of 1996 (HIPAA) establishes nationwide standards for the use, disclosure, storage, and transfer of protected health information. Entities covered by HIPAA, which are health plans, health care clearinghouses, and health care providers, must have a patient's authorization to use or disclose health care information unless there is a specified exception. HIPAA allows a state

to establish standards that are more stringent than its provisions. In Washington, the Uniform Health Care Information Act (UHCIA) governs the disclosure of health care information by health care providers and their agents or employees. The UHCIA prohibits a health care provider from disclosing health care information about a patient unless there is a statutory exception or a written authorization by the patient.

The Public and School Employees' Benefits Boards.

The Health Care Authority (HCA) administers benefits plans, forms benefits contracts, and develops participation rules, and, through the Public Employees' Benefits Board (PEBB), approves schedules of rates and premiums for state and participating local government employees and retirees. The HCA similarly administers benefits plans for school districts, charter schools, and educational service districts through the School Employees' Benefits Board (SEBB).

Summary of Bill:

The following benefit enrollment information collected and maintained by the HCA as director of PEBB and SEBB is exempt from public disclosure under the PRA, except in a deidentified or aggregate format:

- the enrollee's and their dependent's residential addresses, residential and personal wireless phone numbers, personal email addresses, social security numbers, driver's license or identicaid numbers, payroll deductions, and emergency contact information;
- name of a dependent;
- date of birth;
- personal demographic details such as race, ethnicity, sexual orientation, immigration status, national origin, or status as a person with a disability;
- benefit elections;
- documents such as tax returns, or marriage or birth certificates used to verify dependency;
- marital status;
- primary language spoken;
- tobacco use status; and
- tribal affiliation.

Appropriation: None.

Fiscal Note: Not requested.

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) The Center for Medicare and Medicaid Services issued a directive last fall requiring health plans to collect race and ethnicity data beginning January 1, 2023, that are included in voluntary questionnaires from all enrollees joining the Medicare Advantage Plan. The HCA collects that on behalf of over 750 employers. The data collected is not guaranteed to be personal health information or subject to HIPPA protections. Although there is an existing exemption for this information contained in personnel files, because the HCA is not the "employer" of the entities that it administers health insurance on behalf of, there is no comparable exemption for the information collected by the HCA. There is also no comparable exemption for retirees or public school employees. This policy extends the existing exemption to all employees and retirees in the PEBB and SEBB programs. Exempting information held by PEBB and SEBB is important because of the Medicare Advantaged Programs and heavy marketing that is aimed at retirees by companies selling health care plans. Retirees are precious resources, and their information needs to be protected from public disclosure.

(Opposed) None.

Persons Testifying: Senator Steve Conway, prime sponsor; and David Iseminger, Washington State Health Care Authority.

Persons Signed In To Testify But Not Testifying: None.