

SENATE BILL REPORT

SHB 1828

AS REPORTED BY COMMITTEE ON HEALTH & LONG-TERM CARE,
APRIL 4, 1991

Brief Description: Providing regulations for the disclosure of health care records.

SPONSORS: House Committee on Health Care (originally sponsored by Representative Appelwick).

HOUSE COMMITTEE ON HEALTH CARE

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: Do pass as amended.

Signed by Senators West, Chairman; L. Smith, Vice Chairman; Johnson, L. Kreidler, Niemi, and Wojahn.

Staff: Suzanne Brown (786-7483)

Hearing Dates: April 2, 1991; April 4, 1991

BACKGROUND:

Patients sometimes encounter difficulty in obtaining access to their medical and health records. Although the health care provider is usually the owner and custodian of these records, courts have held that patients are entitled to reasonable access to their records. Patients' health records are generally considered confidential. However, the law is unclear regarding access by family members or by third parties for research, financial audit or other purposes.

Numerous fundamental changes threaten the confidentiality of health care information. New developments that threaten confidentiality include third party payment plans, the use of health care information for non-health care purposes, growing government involvement in all aspects of health care and the advent of computers and automated information systems.

There is no single, comprehensive statutory law governing the rights and responsibilities of patients and health care providers with regard to confidentiality of a patient's health records and the conditions under which such records can be disclosed. In 1984, the National Conference of Commissioners on Uniform State Laws developed the Uniform Health Care Information Act for consideration by the states. This act specifies the rights and responsibilities of patients and their health care providers regarding the confidentiality and disclosure of patient health information.

SUMMARY:

The Legislature finds that there is a compelling need for uniform law, rules and procedures governing the use and disclosure of health care information.

A patient's health care information may not be disclosed by the health care provider, his or her assistants, employees or agents without the patient's written authorization. With the exception of third party payer authorizations, a written authorization is valid for up to 90 days. Written authorizations may be revoked unless the disclosure is required for third party payment or, in anticipation of authorization, other substantial action has been taken. All disclosures, except to third party payers, must be documented in the patient's record.

A provider may disclose a patient's health information without authorization if the disclosure is: (1) to another provider believed to be treating the patient; (2) to another person, when confidentiality is maintained, for the purposes of health care education, planning, quality assurance, peer review, or to assist the provider in delivering care, or for administrative, legal, financial or actuarial services to the health care provider; (3) to avoid or minimize an imminent danger to the health or safety of the patient or any other individual; (4) to successive providers; (5) for institutionally approved research purposes where individual identity remains confidential; (6) to auditors; (7) to penal or other custodial institutional officials; (8) to previous providers unless specifically prohibited by the patient; (9) an oral disclosure to immediate family members or significant others unless specifically prohibited by the patient; and (10) for directory information unless prohibited by the patient.

Health care providers must disclose patient information to federal state or local public health and law enforcement authorities when: (1) required by law; (2) the information is necessary to determine licensure, certification or registration; or (3) public health is threatened. All government agencies obtaining health care information in these circumstances must adopt rules establishing record acquisition, retention and security policies.

In response to a written request, a provider must provide the requested information within 15 working days. If the information cannot be located or is held by another provider, the patient must be informed of this fact and provide the name and address of the provider holding the patient's records. If there is a delay, the provider must provide a written explanation of the delay and inform the patient of the date when the information will be available. This date may be no later than 21 days after the initial request.

The provider may charge a reasonable fee for records examination or copying. This fee may not exceed actual administrative costs. The provider is not required to permit

examination or copying of the requested information until the administrative fee is paid.

Providers may deny a patient access to their health care information when, in the judgment of the provider, the information: (1) may be injurious to the patient's health; (2) violates other confidences; (3) may endanger the life or safety of any individual; (4) is compiled solely for litigation, quality assurance, peer review or other administrative purposes; and (5) is prohibited by law.

If a health care information request is denied, the provider must inform the patient of his or her right to select another provider to examine his or her records. This provider must be authorized to treat the same condition. The patient must select and compensate this provider.

Upon written request, a provider must correct or amend a patient's health care information for accuracy or completeness within ten days. If the record cannot be located, is in use or is delayed, the provider must correct or amend the record within 21 days. If a provider refuses to correct or amend the record, the patient must be permitted to file a statement of disagreement in his or her permanent record.

Persons authorized to consent to health care for another individual may exercise that individual's rights under this act. Minors authorized by state or federal law to consent to health care without parental consent may exercise their rights under this act. If parental consent is required by law, a health care provider may rely on the representation of the parent without civil or criminal liability. A deceased patient's personal representative or other legally authorized individual may exercise the deceased patient's rights.

Providers must post a notice specifying patients' rights of access to their health care information. This notice must be posted in a conspicuous place in the provider's health care facility, on a consent form or with a billing or other notice.

Health care providers must adopt reasonable security safeguards for health care information. Providers must maintain an existing health care record during a patient's request for records examination, correction or amendment and for at least one year after receiving a disclosure request.

For violations, a court may award actual damages, reasonable attorneys' fees and other expenses to the prevailing party. Actions for relief must be filed within two years of discovering the cause of action. Violations must not be deemed a violation of the Consumer Protection Act.

A health care provider is not restricted from complying with obligations imposed by federal or state laws or payment programs. Exemptions are provided for juvenile justice, alcohol and drug abuse treatment, mental health, domestic relations and sexually transmitted disease records.

The Freedom of Information Act applies to inspection and copying of patient health care information.

A severability clause is included.

Appropriation: none

Revenue: none

Fiscal Note: available

SUMMARY OF PROPOSED SENATE AMENDMENT:

The legally defined terms and conditions of health care information disclosure for juvenile justice, alcohol and drug abuse treatment, mental health, domestic relations, sexually transmitted disease and industrial insurance or workers' compensation records are not modified.

TESTIMONY FOR:

No clear statutory or case law guidelines currently exist in Washington to allow attorneys to provide accurate and certain advice to their clients regarding access to and confidentiality of health records. This bill will guarantee client access to vital and important health care information and provides specific standards for health care providers and facilities.

TESTIMONY AGAINST: None

TESTIFIED: PRO: Lars Hennem, Pharmacists of WA; Maribeth O'Connor, Group Health; Michele Radosevich, WSTLA; Jill Burrington-Brown, WA State Medical Record Assn.; Andy Dolan, Washington State Medical Association