
SUBSTITUTE HOUSE BILL 1828

State of Washington

52nd Legislature

1991 Regular Session

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

Read first time March 6, 1991.

1 AN ACT Relating to the uniform health care information act; adding
2 a new section to chapter 42.17 RCW; adding a new chapter to Title 70
3 RCW; creating new sections; and prescribing penalties.

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

5 ARTICLE I

6 FINDINGS AND DEFINITIONS

7 NEW SECTION. **Sec. 101.** LEGISLATIVE FINDINGS. The legislature
8 finds that:

9 (1) Health care information is personal and sensitive information
10 that if improperly used or released may do significant harm to a
11 patient's interests in privacy, health care, or other interests.

12 (2) Patients need access to their own health care information as a
13 matter of fairness to enable them to make informed decisions about

1 their health care and correct inaccurate or incomplete information
2 about themselves.

3 (3) In order to retain the full trust and confidence of patients,
4 health care providers have an interest in assuring that health care
5 information is not improperly disclosed and in having clear and certain
6 rules for the disclosure of health care information.

7 (4) Persons other than health care providers obtain, use, and
8 disclose health record information in many different contexts and for
9 many different purposes. It is the public policy of this state that a
10 patient's interest in the proper use and disclosure of the patient's
11 health care information survives even when the information is held by
12 persons other than health care providers.

13 (5) The movement of patients and their health care information
14 across state lines, access to and exchange of health care information
15 from automated data banks, and the emergence of multistate health care
16 providers creates a compelling need for uniform law, rules, and
17 procedures governing the use and disclosure of health care information.

18 NEW SECTION. **Sec. 102.** DEFINITIONS. As used in this chapter,
19 unless the context otherwise requires:

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

23 (a) Statutory, regulatory, fiscal, medical, or scientific
24 standards;

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

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

28 (2) "Directory information" means information disclosing the
29 presence and the general health condition of a particular patient who

1 is a patient in a health care facility or who is currently receiving
2 emergency health care in a health care facility.

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

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

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

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

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

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

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

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

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

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

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

8 (12) "Reasonable fee" means the charges for duplicating or
9 searching the record specified in RCW 36.18.020 (8) or (16),
10 respectively. However, where editing of records by a health care
11 provider is required by statute and is done by the provider personally,
12 the fee may be the usual and customary charge for a basic office visit.

13 ARTICLE II

14 DISCLOSURE OF HEALTH CARE INFORMATION

15 NEW SECTION. **Sec. 201.** DISCLOSURE BY HEALTH CARE PROVIDER.

16 Except as authorized in section 204 of this act, a health care
17 provider, an individual who assists a health care provider in the
18 delivery of health care, or an agent and employee of a health care
19 provider may not disclose health care information about a patient to
20 any other person without the patient's written authorization. A
21 disclosure made under a patient's written authorization must conform to
22 the authorization.

23 Health care providers or facilities shall chart all disclosures,
24 except to third-party health care payors, of health care information,
25 such chartings to become part of the health care information.

1 NEW SECTION. **Sec. 202.** PATIENT AUTHORIZATION TO HEALTH CARE

2 PROVIDER FOR DISCLOSURE. (1) A patient may authorize a health care
3 provider to disclose the patient's health care information. A health
4 care provider shall honor an authorization and, if requested, provide
5 a copy of the recorded health care information unless the health care
6 provider denies the patient access to health care information under
7 section 302 of this act.

8 (2) A health care provider may charge a reasonable fee, not to
9 exceed the health care provider's actual cost for providing the health
10 care information, and is not required to honor an authorization until
11 the fee is paid.

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

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

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

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

18 (d) Identify the provider who is to make the disclosure; and

19 (e) Identify the patient.

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

23 (5) A health care provider shall retain each authorization or
24 revocation in conjunction with any health care information from which
25 disclosures are made. This requirement shall not apply to disclosures
26 to third-party health care payors.

27 (6) Except for authorizations to provide information to third-party
28 health care payors, an authorization may not permit the release of
29 health care information relating to future health care that the patient
30 receives more than ninety days after the authorization was signed.

1 Patients shall be advised of the period of validity of their
2 authorization on the disclosure authorization form.

3 (7) Except for authorizations to provide information to third-party
4 health payors, an authorization in effect on the effective date of this
5 section remains valid for six months after the effective date of this
6 section unless an earlier date is specified or it is revoked under
7 section 203 of this act. Health care information disclosed under such
8 an authorization is otherwise subject to this chapter. An
9 authorization written after the effective date of this section becomes
10 invalid after the expiration date contained in the authorization, which
11 may not exceed ninety days. If the authorization does not contain an
12 expiration date, it expires ninety days after it is signed.

13 NEW SECTION. **Sec. 203.** PATIENT'S REVOCATION OF AUTHORIZATION FOR
14 DISCLOSURE. A patient may revoke in writing a disclosure authorization
15 to a health care provider at any time unless disclosure is required to
16 effectuate payments for health care that has been provided or other
17 substantial action has been taken in reliance on the authorization. A
18 patient may not maintain an action against the health care provider for
19 disclosures made in good-faith reliance on an authorization if the
20 health care provider had no actual notice of the revocation of the
21 authorization.

22 NEW SECTION. **Sec. 204.** DISCLOSURE WITHOUT PATIENT'S
23 AUTHORIZATION. (1) A health care provider may disclose health care
24 information about a patient without the patient's authorization to the
25 extent a recipient needs to know the information, if the disclosure is:

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

1 (b) To any other person who requires health care information for
2 health care education, or to provide planning, quality assurance, peer
3 review, or administrative, legal, financial, or actuarial services to
4 the health care provider; or for assisting the health care provider in
5 the delivery of health care and the health care provider reasonably
6 believes that the person:

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

9 (ii) Will take appropriate steps to protect the health care
10 information;

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

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

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

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

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

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

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

5 (iii) Contains reasonable safeguards to protect the information
6 from redisclosure;

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

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

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

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

20 (ii) Not to disclose the information further, except to accomplish
21 the audit or report unlawful or improper conduct involving fraud in
22 payment for health care by a health care provider or patient, or other
23 unlawful conduct by the health care provider;

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

26 (j) To provide directory information, unless the patient has
27 instructed the health care provider not to make the disclosure.

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 section 205
9 of this act.

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 NEW SECTION. **Sec. 205.** COMPULSORY PROCESS. (1) Before service of
15 a discovery request or compulsory process on a health care provider for
16 health care information, an attorney shall provide advance notice to
17 the health care provider and the patient or the patient's attorney
18 involved through service of process or first class mail, indicating the
19 health care provider from whom the information is sought, what health
20 care information is sought, and the date by which a protective order
21 must be obtained to prevent the health care provider from complying.
22 Such date shall give the patient and the health care provider adequate
23 time to seek a protective order, but in no event be less than fourteen
24 days since the date of service or delivery to the patient and the
25 health care provider of the foregoing. Thereafter the request for
26 discovery or compulsory process shall be served on the health care
27 provider.

28 (2) Without the written consent of the patient, the health care
29 provider may not disclose the health care information sought under

1 subsection (1) of this section if the requestor has not complied with
2 the requirements of subsection (1) of this section. In the absence of
3 a protective order issued by a court of competent jurisdiction
4 forbidding compliance, the health care provider shall disclose the
5 information in accordance with this chapter. In the case of
6 compliance, the request for discovery or compulsory process shall be
7 made a part of the patient record.

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

12 NEW SECTION. **Sec. 206.** CERTIFICATION OF RECORD. Upon the request
13 of the person requesting the record, the health care provider or
14 facility shall certify the record furnished and may charge for such
15 certification in accordance with RCW 36.18.020(9). No record need be
16 certified until the fee is paid. The certification shall be affixed to
17 the record and disclose:

18 (1) The identity of the patient;

19 (2) The kind of health care information involved;

20 (3) The identity of the person to whom the information is being
21 furnished;

22 (4) The identity of the health care provider or facility furnishing
23 the information;

24 (5) The number of pages of the health care information;

25 (6) The date on which the health care information is furnished; and

26 (7) That the certification is to fulfill and meet the requirements
27 of this section.

28 ARTICLE III

2 NEW SECTION. **Sec. 301.** REQUIREMENTS AND PROCEDURES FOR PATIENT'S
3 EXAMINATION AND COPYING. (1) Upon receipt of a written request from a
4 patient to examine or copy all or part of the patient's recorded health
5 care information, a health care provider, as promptly as required under
6 the circumstances, but no later than fifteen working days after
7 receiving the request shall:

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

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

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

15 (d) If the information is in use or unusual circumstances have
16 delayed handling the request, inform the patient and specify in writing
17 the reasons for the delay and the earliest date, not later than twenty-
18 one working days after receiving the request, when the information will
19 be available for examination or copying or when the request will be
20 otherwise disposed of; or

21 (e) Deny the request, in whole or in part, under section 302 of
22 this act and inform the patient.

23 (2) Upon request, the health care provider shall provide an
24 explanation of any code or abbreviation used in the health care
25 information. If a record of the particular health care information
26 requested is not maintained by the health care provider in the
27 requested form, the health care provider is not required to create a
28 new record or reformulate an existing record to make the health care

1 information available in the requested form. The health care provider
2 may charge a reasonable fee, not to exceed the health care provider's
3 actual cost, for providing the health care information and is not
4 required to permit examination or copying until the fee is paid.

5 NEW SECTION. **Sec. 302.** DENIAL OF EXAMINATION AND COPYING. (1)
6 Subject to any conflicting requirement in the public disclosure act,
7 chapter 42.17 RCW, a health care provider may deny access to health
8 care information by a patient if the health care provider reasonably
9 concludes that:

10 (a) Knowledge of the health care information would be injurious to
11 the health of the patient;

12 (b) Knowledge of the health care information could reasonably be
13 expected to lead to the patient's identification of an individual who
14 provided the information in confidence and under circumstances in which
15 confidentiality was appropriate;

16 (c) Knowledge of the health care information could reasonably be
17 expected to cause danger to the life or safety of any individual;

18 (d) The health care information was compiled and is used solely for
19 litigation, quality assurance, peer review, or administrative purposes;
20 or

21 (e) Access to the health care information is otherwise prohibited
22 by law.

23 (2) If a health care provider denies a request for examination and
24 copying under this section, the provider, to the extent possible, shall
25 segregate health care information for which access has been denied
26 under subsection (1) of this section from information for which access
27 cannot be denied and permit the patient to examine or copy the
28 disclosable information.

1 (3) If a health care provider denies a patient's request for
2 examination and copying, in whole or in part, under subsection (1) (a)
3 or (c) of this section, the provider shall permit examination and
4 copying of the record by another health care provider, selected by the
5 patient, who is licensed, certified, registered, or otherwise
6 authorized under the laws of this state to treat the patient for the
7 same condition as the health care provider denying the request. The
8 health care provider denying the request shall inform the patient of
9 the patient's right to select another health care provider under this
10 subsection. The patient shall be responsible for arranging for
11 compensation of the other health care provider so selected.

12 ARTICLE IV

13 CORRECTION AND AMENDMENT OF RECORD

14 NEW SECTION. **Sec. 401.** REQUEST FOR CORRECTION OR AMENDMENT.(1)
15 For purposes of accuracy or completeness, a patient may request in
16 writing that a health care provider correct or amend its record of the
17 patient's health care information to which a patient has access under
18 section 301 of this act.

19 (2) As promptly as required under the circumstances, but no later
20 than ten days after receiving a request from a patient to correct or
21 amend its record of the patient's health care information, the health
22 care provider shall:

23 (a) Make the requested correction or amendment and inform the
24 patient of the action;

25 (b) Inform the patient if the record no longer exists or cannot be
26 found;

1 (c) If the health care provider does not maintain the record,
2 inform the patient and provide the patient with the name and address,
3 if known, of the person who maintains the record;

4 (d) If the record is in use or unusual circumstances have delayed
5 the handling of the correction or amendment request, inform the patient
6 and specify in writing, the earliest date, not later than twenty-one
7 days after receiving the request, when the correction or amendment will
8 be made or when the request will otherwise be disposed of; or

9 (e) Inform the patient in writing of the provider's refusal to
10 correct or amend the record as requested and the patient's right to add
11 a statement of disagreement.

12 NEW SECTION. **Sec. 402.** PROCEDURE FOR ADDING CORRECTION OR
13 AMENDMENT OR STATEMENT OF DISAGREEMENT. (1) In making a correction or
14 amendment, the health care provider shall:

15 (a) Add the amending information as a part of the health record;
16 and

17 (b) Mark the challenged entries as corrected or amended entries and
18 indicate the place in the record where the corrected or amended
19 information is located, in a manner practicable under the
20 circumstances.

21 (2) If the health care provider maintaining the record of the
22 patient's health care information refuses to make the patient's
23 proposed correction or amendment, the provider shall:

24 (a) Permit the patient to file as a part of the record of the
25 patient's health care information a concise statement of the correction
26 or amendment requested and the reasons therefor; and

27 (b) Mark the challenged entry to indicate that the patient claims
28 the entry is inaccurate or incomplete and indicate the place in the

1 record where the statement of disagreement is located, in a manner
2 practicable under the circumstances.

3 ARTICLE V

4 NOTICE OF INFORMATION PRACTICES

5 NEW SECTION. **Sec. 501.** CONTENT AND DISSEMINATION OF NOTICE. (1)

6 A health care provider who provides health care at a health care
7 facility that the provider operates and who maintains a record of a
8 patient's health care information shall create a "notice of information
9 practices" that contains substantially the following:

10 NOTICE

11 "We keep a record of the health care services we provide you. You
12 may ask us to see and copy that record. You may also ask us to
13 correct that record. We will not disclose your record to others
14 unless you direct us to do so or unless the law authorizes or
15 compels us to do so. You may see your record or get more
16 information about it at"

17 (2) The health care provider shall place a copy of the notice of
18 information practices in a conspicuous place in the health care
19 facility, on a consent form or with a billing or other notice provided
20 to the patient.

21 ARTICLE VI

22 PERSONS AUTHORIZED TO ACT FOR PATIENT

1 NEW SECTION. **Sec. 601.** HEALTH CARE REPRESENTATIVES. (1) A person
2 authorized to consent to health care for another may exercise the
3 rights of that person under this chapter to the extent necessary to
4 effectuate the terms or purposes of the grant of authority. If the
5 patient is a minor and is authorized to consent to health care without
6 parental consent under federal and state law, only the minor may
7 exercise the rights of a patient under this chapter as to information
8 pertaining to health care to which the minor lawfully consented. In
9 cases where parental consent is required, a health care provider may
10 rely, without incurring any civil or criminal liability for such
11 reliance, on the representation of a parent that he or she is
12 authorized to consent to health care for the minor patient regardless
13 of whether:

14 (a) The parents are married, unmarried, or separated at the time of
15 the representation;

16 (b) The consenting parent is, or is not, a custodial parent of the
17 minor;

18 (c) The giving of consent by a parent is, or is not, full
19 performance of any agreement between the parents, or of any order or
20 decree in any action entered pursuant to chapter 26.09 RCW.

21 (2) A person authorized to act for a patient shall act in good
22 faith to represent the best interests of the patient.

23 NEW SECTION. **Sec. 602.** REPRESENTATIVE OF DECEASED PATIENT. A
24 personal representative of a deceased patient may exercise all of the
25 deceased patient's rights under this chapter. If there is no personal
26 representative, or upon discharge of the personal representative, a
27 deceased patient's rights under this chapter may be exercised by
28 persons who would have been authorized to make health care decisions

1 for the deceased patient when the patient was living under RCW
2 7.70.065.

3 ARTICLE VII

4 SECURITY SAFEGUARDS AND RECORD RETENTION

5 NEW SECTION. **Sec. 701.** DUTY TO ADOPT SECURITY SAFEGUARDS. A
6 health care provider shall effect reasonable safeguards for the
7 security of all health care information it maintains.

8 NEW SECTION. **Sec. 702.** RETENTION OF RECORD. A health care
9 provider shall maintain a record of existing health care information
10 for at least one year following receipt of an authorization to disclose
11 that health care information under section 203 of this act, and during
12 the pendency of a request for examination and copying under section 301
13 of this act or a request for correction or amendment under section 401
14 of this act.

15 ARTICLE VIII

16 CIVIL REMEDIES

17 NEW SECTION. **Sec. 801.** CIVIL REMEDIES. (1) A person who has
18 complied with this chapter may maintain an action for the relief
19 provided in this section against a health care provider or facility who
20 has not complied with this chapter.

21 (2) The court may order the health care provider or other person to
22 comply with this chapter. Such relief may include actual damages, but
23 shall not include consequential or incidental damages. The court shall

1 award reasonable attorneys' fees and all other expenses reasonably
2 incurred to the prevailing party.

3 (3) Any action under this chapter is barred unless the action is
4 commenced within two years after the cause of action is discovered.

5 (4) A violation of this act shall not be deemed a violation of the
6 consumer protection act, chapter 19.86 RCW.

7 ARTICLE IX

8 MISCELLANEOUS PROVISIONS

9 NEW SECTION. **Sec. 901.** CONFLICTING LAWS. (1) This chapter does
10 not restrict a health care provider from complying with obligations
11 imposed by federal or state health care payment programs or federal or
12 state law.

13 (2) This chapter does not apply to disclosure under chapters 13.50,
14 26.09, 70.24, 70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted
15 under these provisions.

16 NEW SECTION. **Sec. 902.** A new section is added to chapter 42.17
17 RCW to read as follows:

18 FREEDOM OF INFORMATION ACT. Chapter 70.-- RCW (sections 101
19 through 901 of this act) applies to public inspection and copying of
20 health care information of patients.

21 NEW SECTION. **Sec. 903.** UNIFORMITY OF APPLICATION AND
22 CONSTRUCTION. This act shall be applied and construed to effectuate
23 its general purpose to make uniform the law with respect to the subject
24 of this act among states enacting it.

1 NEW SECTION. **Sec. 904.** SHORT TITLE. This act may be cited as the
2 uniform health care information act.

3 NEW SECTION. **Sec. 905.** SEVERABILITY. If any provision of this
4 act or its application to any person or circumstance is held invalid,
5 the remainder of the act or the application of the provision to other
6 persons or circumstances is not affected.

7 NEW SECTION. **Sec. 906.** CAPTIONS. As used in this act, captions
8 constitute no part of the law.

9 NEW SECTION. **Sec. 907.** LEGISLATIVE DIRECTIVE. Sections 101
10 through 901 of this act shall constitute a new chapter in Title 70 RCW.