

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1214

Chapter 448, Laws of 1993

53rd Legislature
1993 Regular Session

MEDICAL RECORDS ACCESS--REVISIONS

EFFECTIVE DATE: 7/1/93

Passed by the House April 23, 1993
Yeas 97 Nays 1

BRIAN EBERSOLE
**Speaker of the
House of Representatives**

Passed by the Senate April 16, 1993
Yeas 46 Nays 0

JOEL PRITCHARD
President of the Senate

Approved May 17, 1993

MIKE LOWRY
Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1214** as passed by the House of Representatives and the Senate on the dates hereon set forth.

ALAN THOMPSON
Chief Clerk

FILED

May 17, 1993 - 1:44 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1214

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

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

Read first time 03/03/93.

1 AN ACT Relating to public health; and amending RCW 70.02.010,
2 70.02.020, 70.02.030, 70.02.050, 70.02.080, 71.05.390, and 71.05.400;
3 adding a new section to chapter 71.05 RCW; providing an effective date;
4 and declaring an emergency.

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

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

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

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

12 (a) Statutory, regulatory, fiscal, medical, or scientific
13 standards;

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

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

17 (2) "Directory information" means information disclosing the
18 presence, and for the purpose of identification, the name, residence,
19 sex, and the general health condition of a particular patient who is a

1 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.

30 (10) "Patient" means an individual who receives or has received
31 health care. The term includes a deceased individual who has received
32 health care.

33 (11) "Person" means an individual, corporation, business trust,
34 estate, trust, partnership, association, joint venture, government,
35 governmental subdivision or agency, or any other legal or commercial
36 entity.

37 (12) "Reasonable fee" means the charges for duplicating or
38 searching the record (~~specified in RCW 36.18.020 (8) or (16),~~
39 respectively), but shall not exceed sixty-five cents per page for the

1 first thirty pages and fifty cents per page for all other pages. In
2 addition, a clerical fee for searching and handling may be charged not
3 to exceed fifteen dollars. These amounts shall be adjusted biennially
4 in accordance with changes in the consumer price index, all consumers,
5 for Seattle-Tacoma metropolitan statistical area as determined by the
6 secretary of health. However, where editing of records by a health
7 care provider is required by statute and is done by the provider
8 personally, the fee may be the usual and customary charge for a basic
9 office visit.

10 (13) "Third-party payor" means an insurer regulated under Title 48
11 RCW authorized to transact business in this state or other
12 jurisdiction, including a health care service contractor, and health
13 maintenance organization; or an employee welfare benefit plan; or a
14 state or federal health benefit program.

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

17 Except as authorized in RCW 70.02.050, a health care provider, an
18 individual who assists a health care provider in the delivery of health
19 care, or an agent and employee of a health care provider may not
20 disclose health care information about a patient to any other person
21 without the patient's written authorization. A disclosure made under
22 a patient's written authorization must conform to the authorization.

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

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

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

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

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

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

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

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

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

9 (e) Identify the patient.

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

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

17 (6) Except for authorizations given pursuant to an agreement with
18 a treatment or monitoring program or disciplinary authority under
19 chapter 18.72 or 18.130 RCW or to provide information to third-party
20 ((health-care)) payors, an authorization may not permit the release of
21 health care information relating to future health care that the patient
22 receives more than ninety days after the authorization was signed.
23 Patients shall be advised of the period of validity of their
24 authorization on the disclosure authorization form. If the
25 authorization does not contain an expiration date, it expires ninety
26 days after it is signed.

27 ~~((7) Except for authorizations to provide information to third-~~
28 ~~party health payors, an authorization in effect on July 28, 1991,~~
29 ~~remains valid for six months after July 28, 1991, unless an earlier~~
30 ~~date is specified or it is revoked under RCW 70.02.040. Health care~~
31 ~~information disclosed under such an authorization is otherwise subject~~
32 ~~to this chapter. An authorization written after July 28, 1991, becomes~~
33 ~~invalid after the expiration date contained in the authorization, which~~
34 ~~may not exceed ninety days. If the authorization does not contain an~~
35 ~~expiration date, it expires ninety days after it is signed.))~~

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

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

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

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

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

14 (ii) Will take appropriate steps to protect the health care
15 information;

16 (c) To any other health care provider reasonably believed to have
17 previously provided health care to the patient, to the extent necessary
18 to provide health care to the patient, unless the patient has
19 instructed the health care provider in writing not to make the
20 disclosure;

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

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

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

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

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

37 (ii) Is impracticable without the use or disclosure of the health
38 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) In the case of a hospital or health care provider to provide,
25 in cases reported by fire, police, sheriff, or other public authority,
26 name, residence, sex, age, occupation, condition, diagnosis, or extent
27 and location of injuries as determined by a physician, and whether the
28 patient was conscious when admitted.

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

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

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

1 (c) Pursuant to compulsory process in accordance with RCW
2 70.02.060.

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

7 **Sec. 5.** RCW 70.02.080 and 1991 c 335 s 301 are each amended to
8 read as follows:

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

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

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

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

21 (d) If the information is in use or unusual circumstances have
22 delayed handling the request, inform the patient and specify in writing
23 the reasons for the delay and the earliest date, not later than twenty-
24 one working days after receiving the request, when the information will
25 be available for examination or copying or when the request will be
26 otherwise disposed of; or

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

29 (2) Upon request, the health care provider shall provide an
30 explanation of any code or abbreviation used in the health care
31 information. If a record of the particular health care information
32 requested is not maintained by the health care provider in the
33 requested form, the health care provider is not required to create a
34 new record or reformulate an existing record to make the health care
35 information available in the requested form. The health care provider
36 may charge a reasonable fee(~~(, not to exceed the health care provider's~~
37 ~~actual cost,)) for providing the health care information and is not
38 required to permit examination or copying until the fee is paid.~~

1 **Sec. 6.** RCW 71.05.390 and 1990 c 3 s 112 are each amended to read
2 as follows:

3 The fact of admission and all information and records compiled,
4 obtained, or maintained in the course of providing services to either
5 voluntary or involuntary recipients of services at public or private
6 agencies shall be confidential.

7 Information and records may be disclosed only:

8 (1) In communications between qualified professional persons to
9 meet the requirements of this chapter, in the provision of services or
10 appropriate referrals, or in the course of guardianship proceedings.
11 The consent of the patient, or his or her guardian, (~~(must)~~) shall be
12 obtained before information or records may be disclosed by a
13 professional person employed by a facility to a professional person,
14 not employed by the facility, who does not have the medical
15 responsibility for the patient's care or who is not a designated county
16 mental health professional or who is not involved in providing services
17 under the community mental health services act, chapter 71.24 RCW.

18 (2) When the communications regard the special needs of a patient
19 and the necessary circumstances giving rise to such needs and the
20 disclosure is made by a facility providing outpatient services to the
21 operator of a care facility in which the patient resides.

22 (3) When the person receiving services, or his or her guardian,
23 designates persons to whom information or records may be released, or
24 if the person is a minor, when his or her parents make such
25 designation.

26 (4) To the extent necessary for a recipient to make a claim, or for
27 a claim to be made on behalf of a recipient for aid, insurance, or
28 medical assistance to which he or she may be entitled.

29 (5) For either program evaluation (~~(and/or)~~) or research, or both:
30 PROVIDED, That the secretary of social and health services adopts rules
31 for the conduct of (~~(such)~~) the evaluation (~~(and/or)~~) or research, or
32 both. Such rules shall include, but need not be limited to, the
33 requirement that all evaluators and researchers must sign an oath of
34 confidentiality substantially as follows:

35 "As a condition of conducting evaluation or research concerning
36 persons who have received services from (fill in the facility, agency,
37 or person) I,, agree not to divulge, publish, or
38 otherwise make known to unauthorized persons or the public any
39 information obtained in the course of such evaluation or research

1 regarding persons who have received services such that the person who
2 received such services is identifiable.

3 I recognize that unauthorized release of confidential information
4 may subject me to civil liability under the provisions of state law.

5 /s/ "

6 (6) To the courts as necessary to the administration of this
7 chapter.

8 (7) To law enforcement officers, public health officers, or
9 personnel of the department of corrections or the indeterminate
10 sentence review board for persons who are the subject of the records
11 and who are committed to the custody of the department of corrections
12 or indeterminate sentence review board which information or records are
13 necessary to carry out the responsibilities of their office. Except
14 for dissemination of information released pursuant to RCW 71.05.425 and
15 4.24.550, regarding persons committed under this chapter under RCW
16 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
17 defined in RCW 9.94A.030, the extent of information that may be
18 released is limited as follows:

19 (a) Only the fact, place, and date of involuntary admission, the
20 fact and date of discharge, and the last known address shall be
21 disclosed upon request; and

22 (b) The law enforcement and public health officers or personnel of
23 the department of corrections or indeterminate sentence review board
24 shall be obligated to keep such information confidential in accordance
25 with this chapter; and

26 (c) Additional information shall be disclosed only after giving
27 notice to said person and his or her counsel and upon a showing of
28 clear, cogent and convincing evidence that such information is
29 necessary and that appropriate safeguards for strict confidentiality
30 are and will be maintained(~~(:—PROVIDED)~~). However, (~~(that)~~) in the
31 event the said person has escaped from custody, said notice prior to
32 disclosure is not necessary and that the facility from which the person
33 escaped shall include an evaluation as to whether the person is of
34 danger to persons or property and has a propensity toward violence.

35 (8) To the attorney of the detained person.

36 (9) To the prosecuting attorney as necessary to carry out the
37 responsibilities of the office under RCW 71.05.330(2) and
38 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access

1 to records regarding the committed person's treatment and prognosis,
2 medication, behavior problems, and other records relevant to the issue
3 of whether treatment less restrictive than inpatient treatment is in
4 the best interest of the committed person or others. Information shall
5 be disclosed only after giving notice to the committed person and the
6 person's counsel.

7 (10) To appropriate law enforcement agencies and to a person, when
8 the identity of the person is known to the public or private agency,
9 whose health and safety has been threatened, or who is known to have
10 been repeatedly harassed, by the patient. The person may designate a
11 representative to receive the disclosure. The disclosure shall be made
12 by the professional person in charge of the public or private agency or
13 his or her designee and shall include the dates of admission,
14 discharge, authorized or unauthorized absence from the agency's
15 facility, and only such other information that is pertinent to the
16 threat or harassment. The decision to disclose or not shall not result
17 in civil liability for the agency or its employees so long as the
18 decision was reached in good faith and without gross negligence.

19 (11) To the persons designated in RCW 71.05.425 for the purposes
20 described in that section.

21 (12) Civil liability and immunity for the release of information
22 about a particular person who is committed to the department under RCW
23 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as
24 defined in RCW 9.94A.030, is governed by RCW 4.24.550.

25 (13) To a patient's next of kin, guardian, or conservator, if any,
26 in the event of death, as provided in RCW 71.05.400.

27 (14) To the department of health of the purposes of determining
28 compliance with state or federal licensure, certification, or
29 registration rules or laws. However, the information and records
30 obtained under this subsection are exempt from public inspection and
31 copying pursuant to chapter 42.17 RCW.

32 The fact of admission, as well as all records, files, evidence,
33 findings, or orders made, prepared, collected, or maintained pursuant
34 to this chapter shall not be admissible as evidence in any legal
35 proceeding outside this chapter without the written consent of the
36 person who was the subject of the proceeding except in a subsequent
37 criminal prosecution of a person committed pursuant to RCW 71.05.280(3)
38 or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter
39 10.77 RCW due to incompetency to stand trial or in a civil commitment

1 proceeding pursuant to chapter 71.09 RCW. The records and files
2 maintained in any court proceeding pursuant to this chapter shall be
3 confidential and available subsequent to such proceedings only to the
4 person who was the subject of the proceeding or his or her attorney.
5 In addition, the court may order the subsequent release or use of such
6 records or files only upon good cause shown if the court finds that
7 appropriate safeguards for strict confidentiality are and will be
8 maintained.

9 **Sec. 7.** RCW 71.05.400 and 1974 ex.s. c 115 s 1 are each amended to
10 read as follows:

11 (1) A public or private agency shall release to a patient's next of
12 kin, attorney, guardian, or conservator, if any,

13 (a) The information that the person is presently a patient in the
14 facility or that the person is seriously physically ill;

15 (b) A statement evaluating the mental and physical condition of the
16 patient, and a statement of the probable duration of the patient's
17 confinement, if such information is requested by the next of kin,
18 attorney, guardian, or conservator; and such other information
19 requested by the next of kin or attorney as may be necessary to decide
20 whether or not proceedings should be instituted to appoint a guardian
21 or conservator.

22 (2) Upon the death of a patient, his or her next of kin, guardian,
23 or conservator, if any, shall be notified.

24 Next of kin who are of legal age and competent shall be notified
25 under this section in the following order: Spouse, parents, children,
26 brothers and sisters, and other relatives according to the degree of
27 relation. Access to all records and information compiled, obtained, or
28 maintained in the course of providing services to a deceased patient
29 shall be governed by RCW 70.02.140.

30 NEW SECTION. **Sec. 8.** A new section is added to chapter 71.05 RCW
31 to read as follows:

32 Except as otherwise provided in this chapter, the uniform health
33 care information act, chapter 70.02 RCW, applies to all records and
34 information compiled, obtained, or maintained in the course of
35 providing services.

1 NEW SECTION. **Sec. 9.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and shall take
4 effect July 1, 1993.

 Passed the House April 23, 1993.

 Passed the Senate April 16, 1993.

 Approved by the Governor May 17, 1993.

 Filed in Office of Secretary of State May 17, 1993.