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**ENGROSSED SUBSTITUTE SENATE BILL 5158**

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**State of Washington**

**59th Legislature**

**2005 Regular Session**

**By** Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser, Brandland, Kastama, Parlette and Benson)

READ FIRST TIME 02/14/05.

1        AN ACT Relating to making certain provisions in the uniform health  
2 care information act consistent with the health insurance portability  
3 and accountability act privacy regulation, by addressing the period of  
4 validity of an authorization, accounting for disclosures, reporting of  
5 criminal activities, sharing quality improvement information, and  
6 modifying provisions on payment for health care, health care  
7 operations, and related definitions; and amending RCW 70.02.010,  
8 70.02.020, 70.02.030, and 70.02.050.

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

10        **Sec. 1.** RCW 70.02.010 and 2002 c 318 s 1 are each amended to read  
11 as follows:

12        The definitions in this section apply throughout this chapter  
13 unless the context clearly requires otherwise.

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

17        (a) Statutory, regulatory, fiscal, medical, or scientific  
18 standards;

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

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

4 (2) "Directory information" means information disclosing the  
5 presence, and for the purpose of identification, the name, (~~residence,~~  
6 ~~sex~~) location within a health care facility, and the general health  
7 condition of a particular patient who is a patient in a health care  
8 facility or who is currently receiving emergency health care in a  
9 health care facility.

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

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

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

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

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

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

28 (7) "Health care operations" means any of the following activities  
29 of a health care provider, health care facility, or third-party payor  
30 to the extent that the activities are related to functions that make an  
31 entity a health care provider, a health care facility, or a third-party  
32 payor:

33 (a) Conducting: Quality assessment and improvement activities,  
34 including outcomes evaluation and development of clinical guidelines,  
35 if the obtaining of generalizable knowledge is not the primary purpose  
36 of any studies resulting from such activities; population-based  
37 activities relating to improving health or reducing health care costs,

1 protocol development, case management and care coordination, contacting  
2 of health care providers and patients with information about treatment  
3 alternatives; and related functions that do not include treatment;

4 (b) Reviewing the competence or qualifications of health care  
5 professionals, evaluating practitioner and provider performance and  
6 third-party payor performance, conducting training programs in which  
7 students, trainees, or practitioners in areas of health care learn  
8 under supervision to practice or improve their skills as health care  
9 providers, training of nonhealth care professionals, accreditation,  
10 certification, licensing, or credentialing activities;

11 (c) Underwriting, premium rating, and other activities relating to  
12 the creation, renewal, or replacement of a contract of health insurance  
13 or health benefits, and ceding, securing, or placing a contract for  
14 reinsurance of risk relating to claims for health care, including stop-  
15 loss insurance and excess of loss insurance, if any applicable legal  
16 requirements are met;

17 (d) Conducting or arranging for medical review, legal services, and  
18 auditing functions, including fraud and abuse detection and compliance  
19 programs;

20 (e) Business planning and development, such as conducting cost-  
21 management and planning-related analyses related to managing and  
22 operating the health care facility or third-party payor, including  
23 formulary development and administration, development, or improvement  
24 of methods of payment or coverage policies; and

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

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

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

34 (iii) Resolution of internal grievances;

35 (iv) The sale, transfer, merger, or consolidation of all or part of  
36 a health care provider, health care facility, or third-party payor with  
37 another health care provider, health care facility, or third-party

1 payor or an entity that following such activity will become a health  
2 care provider, health care facility, or third-party payor, and due  
3 diligence related to such activity; and

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

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

12 ((+8)) (9) "Institutional review board" means any board,  
13 committee, or other group formally designated by an institution, or  
14 authorized under federal or state law, to review, approve the  
15 initiation of, or conduct periodic review of research programs to  
16 assure the protection of the rights and welfare of human research  
17 subjects.

18 ((+9)) (10) "Maintain," as related to health care information,  
19 means to hold, possess, preserve, retain, store, or control that  
20 information.

21 ((+10)) (11) "Patient" means an individual who receives or has  
22 received health care. The term includes a deceased individual who has  
23 received health care.

24 ((+11)) (12) "Payment" means:

25 (a) The activities undertaken by:

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

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

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

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

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

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

6 (iv) Review of health care services with respect to medical  
7 necessity, coverage under a health plan, appropriateness of care, or  
8 justification of charges;

9 (v) Utilization review activities, including precertification and  
10 preauthorization of services, and concurrent and retrospective review  
11 of services; and

12 (vi) Disclosure to consumer reporting agencies of any of the  
13 following health care information relating to collection of premiums or  
14 reimbursement:

15 (A) Name and address;

16 (B) Date of birth;

17 (C) Social security number;

18 (D) Payment history;

19 (E) Account number; and

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

22 (13) "Person" means an individual, corporation, business trust,  
23 estate, trust, partnership, association, joint venture, government,  
24 governmental subdivision or agency, or any other legal or commercial  
25 entity.

26 ~~((+12))~~ (14) "Reasonable fee" means the charges for duplicating or  
27 searching the record, but shall not exceed sixty-five cents per page  
28 for the first thirty pages and fifty cents per page for all other  
29 pages. In addition, a clerical fee for searching and handling may be  
30 charged not to exceed fifteen dollars. These amounts shall be adjusted  
31 biennially in accordance with changes in the consumer price index, all  
32 consumers, for Seattle-Tacoma metropolitan statistical area as  
33 determined by the secretary of health. However, where editing of  
34 records by a health care provider is required by statute and is done by  
35 the provider personally, the fee may be the usual and customary charge  
36 for a basic office visit.

37 ~~((+13))~~ (15) "Third-party payor" means an insurer regulated under  
38 Title 48 RCW authorized to transact business in this state or other

1 jurisdiction, including a health care service contractor, and health  
2 maintenance organization; or an employee welfare benefit plan; or a  
3 state or federal health benefit program.

4 (16) "Treatment" means the provision, coordination, or management  
5 of health care and related services by one or more health care  
6 providers or health care facilities, including the coordination or  
7 management of health care by a health care provider or health care  
8 facility with a third party; consultation between health care providers  
9 or health care facilities relating to a patient; or the referral of a  
10 patient for health care from one health care provider or health care  
11 facility to another.

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

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

20 ~~((Health care providers or facilities shall chart all disclosures,~~  
21 ~~except to third party payors, of health care information, such~~  
22 ~~chartings to become part of the health care information.))~~

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

- 27 (a) To carry out treatment, payment, and health care operations;  
28 (b) To the patient of health care information about him or her;  
29 (c) Incident to a use or disclosure that is otherwise permitted or  
30 required;  
31 (d) Pursuant to an authorization where the patient authorized the  
32 disclosure of health care information about himself or herself;  
33 (e) Of directory information;  
34 (f) To persons involved in the patient's care;  
35 (g) For national security or intelligence purposes if an accounting  
36 of disclosures is not permitted by law;

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

3 (i) Of a limited data set that excludes direct identifiers of the  
4 patient or of relatives, employers, or household members of the  
5 patient.

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

8 (1) A patient may authorize a health care provider or health care  
9 facility to disclose the patient's health care information. A health  
10 care provider or health care facility shall honor an authorization and,  
11 if requested, provide a copy of the recorded health care information  
12 unless the health care provider or health care facility denies the  
13 patient access to health care information under RCW 70.02.090.

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

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

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

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

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

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

26 (e) Identify the patient; and

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

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

32 (5) A health care provider or health care facility shall retain the  
33 original or a copy of each authorization or revocation in conjunction  
34 with any health care information from which disclosures are made.  
35 (~~This requirement shall not apply to disclosures to third party~~  
36 ~~payors.~~)

1       ~~(6) Except for authorizations given pursuant to an agreement with~~  
2 ~~a treatment or monitoring program or disciplinary authority under~~  
3 ~~chapter 18.71 or 18.130 RCW, when the patient is under the supervision~~  
4 ~~of the department of corrections, or to provide information to third-~~  
5 ~~party payors, an authorization may not permit the release of health~~  
6 ~~care information relating to future health care that the patient~~  
7 ~~receives more than ninety days after the authorization was signed.~~  
8 ~~Patients shall be advised of the period of validity of their~~  
9 ~~authorization on the disclosure authorization form. If the~~  
10 ~~authorization does not contain an expiration date and the patient is~~  
11 ~~not under the supervision of the department of corrections, it expires~~  
12 ~~ninety days after it is signed.~~

13       ~~(7))~~ (6) Where the patient is under the supervision of the  
14 department of corrections, an authorization signed pursuant to this  
15 section for health care information related to mental health or drug or  
16 alcohol treatment expires at the end of the term of supervision, unless  
17 the patient is part of a treatment program that requires the continued  
18 exchange of information until the end of the period of treatment.

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

21       (1) A health care provider or health care facility may disclose  
22 health care information about a patient without the patient's  
23 authorization to the extent a recipient needs to know the information,  
24 if the disclosure is:

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

27       (b) To any other person who requires health care information for  
28 health care education, or to provide planning, quality assurance, peer  
29 review, or administrative, legal, financial, ~~((or))~~ actuarial services  
30 to, or other health care operations for or on behalf of the health care  
31 provider or health care facility; or for assisting the health care  
32 provider or health care facility in the delivery of health care and the  
33 health care provider or health care facility reasonably believes that  
34 the person:

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

1 (ii) Will take appropriate steps to protect the health care  
2 information;

3 (c) To any other health care provider or health care facility  
4 reasonably believed to have previously provided health care to the  
5 patient, to the extent necessary to provide health care to the patient,  
6 unless the patient has instructed the health care provider or health  
7 care facility in writing not to make the disclosure;

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

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

19 (f) To a health care provider or health care facility who is the  
20 successor in interest to the health care provider or health care  
21 facility maintaining the health care information;

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

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

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

28 (iii) Contains reasonable safeguards to protect the information  
29 from redisclosure;

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

33 (v) Contains procedures to remove or destroy at the earliest  
34 opportunity, consistent with the purposes of the project, information  
35 that would enable the patient to be identified, unless an institutional  
36 review board authorizes retention of identifying information for  
37 purposes of another research project;

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

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

6 (ii) Not to disclose the information further, except to accomplish  
7 the audit or report unlawful or improper conduct involving fraud in  
8 payment for health care by a health care provider or patient, or other  
9 unlawful conduct by the health care provider;

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

12 (j) To provide directory information, unless the patient has  
13 instructed the health care provider or health care facility not to make  
14 the disclosure;

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

23 (l) To federal, state, or local law enforcement authorities and the  
24 health care provider, health care facility, or third-party payor  
25 believes in good faith that the health care information disclosed  
26 constitutes evidence of criminal conduct that occurred on the premises  
27 of the health care provider, health care facility, or third-party  
28 payor;

29 (m) To another health care provider, health care facility, or  
30 third-party payor for the health care operations of the health care  
31 provider, health care facility, or third-party payor that receives the  
32 information, if each entity has or had a relationship with the patient  
33 who is the subject of the health care information being requested, the  
34 health care information pertains to such relationship, and the  
35 disclosure is for the purposes described in RCW 70.02.010(7) (a) and  
36 (b); or

37 (n) For payment.

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

4           (a) To federal, state, or local public health authorities, to the  
5 extent the health care provider is required by law to report health  
6 care information; when needed to determine compliance with state or  
7 federal licensure, certification or registration rules or laws; or when  
8 needed to protect the public health;

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

11           (c) To county coroners and medical examiners for the investigations  
12 of deaths;

13           (d) Pursuant to compulsory process in accordance with RCW  
14 70.02.060.

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

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