

CERTIFICATION OF ENROLLMENT

**SUBSTITUTE HOUSE BILL 1043**

Chapter 193, Laws of 2017

65th Legislature  
2017 Regular Session

INSURANCE COMMISSIONER--NONPUBLIC PERSONAL HEALTH INFORMATION--  
CONFIDENTIALITY

EFFECTIVE DATE: 7/23/2017

Passed by the House April 20, 2017  
Yeas 93 Nays 3

FRANK CHOPP

**Speaker of the House of Representatives**

Passed by the Senate April 19, 2017  
Yeas 49 Nays 0

CYRUS HABIB

**President of the Senate**

Approved May 5, 2017 10:05 AM

JAY INSLEE

**Governor of the State of Washington**

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1043** as passed by House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

**Chief Clerk**

FILED

May 5, 2017

**Secretary of State  
State of Washington**

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**SUBSTITUTE HOUSE BILL 1043**

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AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

**State of Washington                      65th Legislature                      2017 Regular Session**

**By** House Health Care & Wellness (originally sponsored by Representatives Robinson, Harris, Clibborn, Riccelli, Cody, Jinkins, Tharinger, Appleton, and Sawyer; by request of Insurance Commissioner)

READ FIRST TIME 02/01/17.

1            AN ACT Relating to nonpublic personal health information;  
2 reenacting and amending RCW 42.56.400; and adding a new section to  
3 chapter 48.02 RCW.

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

5            NEW SECTION.    **Sec. 1.**    A new section is added to chapter 48.02  
6 RCW to read as follows:

7            (1) All nonpublic personal health information obtained by,  
8 disclosed to, or in the custody of the commissioner, regardless of  
9 the form or medium, is confidential and is not subject to public  
10 disclosure under chapter 42.56 RCW. The commissioner shall not  
11 disclose nonpublic personal health information except in the  
12 furtherance of regulatory or legal action brought as a part of the  
13 commissioner's official duties.

14            (2) The following definitions apply only for the purposes of this  
15 section:

16            (a) "Health information" means any information or data, except  
17 age or gender, whether oral or recorded in any form or medium,  
18 created by or derived from a health care provider or a patient, or a  
19 policyholder or enrollee, that relates to:

20            (i) The past, present, or future physical, mental, or behavioral  
21 health or condition of an individual;

1 (ii) The provision of health care to an individual; or

2 (iii) Payment for the provision of health care to an individual.

3 (b) "Health care" means preventive, diagnostic, therapeutic,  
4 rehabilitative, maintenance, or palliative care, services,  
5 procedures, tests, or counseling that:

6 (i) Relates to the physical, mental, or behavioral condition of  
7 an individual;

8 (ii) Affects the structure or function of the human body or any  
9 part of the human body, including the banking of blood, sperm,  
10 organs, or any other tissue; or

11 (iii) Prescribes, dispenses, or furnishes to an individual drugs  
12 or biologicals, or medical devices or health care equipment and  
13 supplies.

14 (c) "Nonpublic personal health information" means health  
15 information:

16 (i) That identifies an individual who is the subject of the  
17 information; or

18 (ii) With respect to which there is a reasonable basis to believe  
19 that the information could be used to identify an individual.

20 (d) "Patient" means an individual who is receiving, has received,  
21 or has sought health care. The term includes a deceased individual  
22 who has received health care.

23 (e) "Policyholder" or "enrollee" means a person who is covered  
24 by, enrolled in, has applied for, or purchased, an insurance policy,  
25 a health plan as defined in RCW 48.43.005, a group plan, or any other  
26 product regulated by the insurance commissioner. "Policyholder" or  
27 "enrollee" may include, without limitation, a subscriber, member,  
28 annuitant, beneficiary, spouse, or dependent.

29 (3) The commissioner may:

30 (a) Share documents, materials, or other information, including  
31 the confidential documents, materials, or information subject to  
32 subsection (1) of this section, with (i) the national association of  
33 insurance commissioners and its affiliates and subsidiaries, and (ii)  
34 regulatory and law enforcement officials of this and other states and  
35 nations, the federal government, and international authorities, if  
36 the recipient agrees to maintain the confidentiality and privileged  
37 status of the document, material, or other information;

38 (b) Receive documents, materials, or information, including  
39 otherwise either confidential or privileged documents, materials, or  
40 information, from (i) the national association of insurance

1 commissioners and its affiliates and subsidiaries, and (ii)  
2 regulatory and law enforcement officials of this and other states and  
3 nations, the federal government, and international authorities and  
4 must maintain as confidential or privileged any document, material,  
5 or information received that is either confidential or privileged, or  
6 both, under the laws of the jurisdiction that is the source of the  
7 document, material, or information; and

8 (c) Enter into agreements governing the sharing and use of  
9 information consistent with this subsection.

10 (4) No waiver of an existing claim of confidentiality or  
11 privilege in the documents, materials, or information may occur as a  
12 result of disclosure to the commissioner under this section or as a  
13 result of sharing as authorized in subsection (3) of this section.

14 (5) The commissioner shall add language in large font to the  
15 release consumers use when filing complaints with the office, whether  
16 on-line or in writing, informing them that the office may share their  
17 personal health information with other entities and for the purposes  
18 authorized under subsection (3) of this section, and that the  
19 information will only be shared if it is to be held confidential by  
20 the other entity. Consumers shall be provided the opportunity to opt  
21 out at the time of filing their complaint, indicating that their  
22 personal health information may not be shared under subsection (3) of  
23 this section.

24 **Sec. 2.** RCW 42.56.400 and 2016 c 142 s 20, 2016 c 142 s 19, and  
25 2016 c 122 s 4 are each reenacted and amended to read as follows:

26 The following information relating to insurance and financial  
27 institutions is exempt from disclosure under this chapter:

28 (1) Records maintained by the board of industrial insurance  
29 appeals that are related to appeals of crime victims' compensation  
30 claims filed with the board under RCW 7.68.110;

31 (2) Information obtained and exempted or withheld from public  
32 inspection by the health care authority under RCW 41.05.026, whether  
33 retained by the authority, transferred to another state purchased  
34 health care program by the authority, or transferred by the authority  
35 to a technical review committee created to facilitate the  
36 development, acquisition, or implementation of state purchased health  
37 care under chapter 41.05 RCW;

1 (3) The names and individual identification data of either all  
2 owners or all insureds, or both, received by the insurance  
3 commissioner under chapter 48.102 RCW;

4 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

5 (5) Information provided under RCW 48.05.510 through 48.05.535,  
6 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and  
7 48.46.600 through 48.46.625;

8 (6) Examination reports and information obtained by the  
9 department of financial institutions from banks under RCW 30A.04.075,  
10 from savings banks under RCW 32.04.220, from savings and loan  
11 associations under RCW 33.04.110, from credit unions under RCW  
12 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and  
13 from securities brokers and investment advisers under RCW 21.20.100,  
14 all of which is confidential and privileged information;

15 (7) Information provided to the insurance commissioner under RCW  
16 48.110.040(3);

17 (8) Documents, materials, or information obtained by the  
18 insurance commissioner under RCW 48.02.065, all of which are  
19 confidential and privileged;

20 (9) Documents, materials, or information obtained by the  
21 insurance commissioner under RCW 48.31B.015(2) (l) and (m),  
22 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential  
23 and privileged;

24 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and  
25 7.70.140 that, alone or in combination with any other data, may  
26 reveal the identity of a claimant, health care provider, health care  
27 facility, insuring entity, or self-insurer involved in a particular  
28 claim or a collection of claims. For the purposes of this subsection:

29 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

30 (b) "Health care facility" has the same meaning as in RCW  
31 48.140.010(6).

32 (c) "Health care provider" has the same meaning as in RCW  
33 48.140.010(7).

34 (d) "Insuring entity" has the same meaning as in RCW  
35 48.140.010(8).

36 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

37 (11) Documents, materials, or information obtained by the  
38 insurance commissioner under RCW 48.135.060;

39 (12) Documents, materials, or information obtained by the  
40 insurance commissioner under RCW 48.37.060;

- 1 (13) Confidential and privileged documents obtained or produced  
2 by the insurance commissioner and identified in RCW 48.37.080;
- 3 (14) Documents, materials, or information obtained by the  
4 insurance commissioner under RCW 48.37.140;
- 5 (15) Documents, materials, or information obtained by the  
6 insurance commissioner under RCW 48.17.595;
- 7 (16) Documents, materials, or information obtained by the  
8 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and  
9 (7)(a)(ii);
- 10 (17) Documents, materials, or information obtained by the  
11 insurance commissioner in the commissioner's capacity as receiver  
12 under RCW 48.31.025 and 48.99.017, which are records under the  
13 jurisdiction and control of the receivership court. The commissioner  
14 is not required to search for, log, produce, or otherwise comply with  
15 the public records act for any records that the commissioner obtains  
16 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as  
17 a receiver, except as directed by the receivership court;
- 18 (18) Documents, materials, or information obtained by the  
19 insurance commissioner under RCW 48.13.151;
- 20 (19) Data, information, and documents provided by a carrier  
21 pursuant to section 1, chapter 172, Laws of 2010;
- 22 (20) Information in a filing of usage-based insurance about the  
23 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);
- 24 (21) Data, information, and documents, other than those described  
25 in RCW 48.02.210(2), that are submitted to the office of the  
26 insurance commissioner by an entity providing health care coverage  
27 pursuant to RCW 28A.400.275 and 48.02.210;
- 28 (22) Data, information, and documents obtained by the insurance  
29 commissioner under RCW 48.29.017;
- 30 (23) Information not subject to public inspection or public  
31 disclosure under RCW 48.43.730(5);
- 32 (24) Documents, materials, or information obtained by the  
33 insurance commissioner under chapter 48.05A RCW; ~~((and))~~
- 34 (25) Documents, materials, or information obtained by the  
35 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),  
36 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,  
37 materials, or information independently qualify for exemption from  
38 disclosure as documents, materials, or information in possession of  
39 the commissioner pursuant to a financial conduct examination and  
40 exempt from disclosure under RCW 48.02.065; and

1       (26) Nonpublic personal health information obtained by, disclosed  
2 to, or in the custody of the insurance commissioner, as provided in  
3 section 1 of this act.

Passed by the House April 20, 2017.

Passed by the Senate April 19, 2017.

Approved by the Governor May 5, 2017.

Filed in Office of Secretary of State May 5, 2017.

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