

1 terminate contractual obligations between the principal and a
2 third person, including a contractor.

3 "Commissioner" means the insurance commissioner.

4 "Disclose" means to release, transfer, provide access to,
5 share, or otherwise divulge protected health information to any
6 person other than the individual who is the subject of the
7 information. The term includes the initial disclosure and any
8 subsequent redisclosures of protected health information.

9 "Educational institution" means an institution or place for
10 instruction or education including any public or private
11 elementary school, secondary school, vocational school,
12 correspondence school, business school, junior college, teachers
13 college, college, normal school, professional school,
14 university, or scientific or technical institution, or other
15 institution furnishing education for children and adults.

16 "Employer" means any individual or type of organization,
17 including any partnership, association, trust, estate, joint
18 stock company, insurance company, or corporation, whether
19 domestic or foreign, a debtor in possession or receiver or
20 trustee in bankruptcy, or a legal representative of a deceased
21 person, who has one or more regular individuals in his or her
22 employment.



1 "Employment" means services performed for wages under any
2 contract of hire, written or oral, expressed or implied, with an
3 employer.

4 "Entity" means a health care provider, health care data
5 organization, health plan, health oversight agency, public
6 health authority, employer, insurer, health researcher, law
7 enforcement official, or educational institution, except as
8 otherwise defined for purposes of a particular section only.

9 "Health care" means:

10 (1) Preventive, diagnostic, therapeutic, rehabilitative,
11 palliative, or maintenance services:

12 (A) With respect to the physical or mental condition
13 of an individual; or

14 (B) Affecting the structure or function of the human
15 body or any part of the human body, including the
16 banking of blood, sperm, organs, or any other
17 tissue;

18 or

19 (2) Any sale or dispensing of a drug, device, equipment,
20 or other health care-related item to an individual, or
21 for the use of an individual pursuant to a
22 prescription or order by a health care provider.



1 "Health care data organization" means an entity that
2 engages primarily in the business of collecting, analyzing, and
3 disseminating identifiable and nonidentifiable patient
4 information. A health care data organization is not a health
5 care provider, an insurer, a health researcher, or a health
6 oversight agency.

7 "Health care provider" means a person who, with respect to
8 any protected health information, receives, creates, uses,
9 maintains, or discloses the protected health information while
10 acting in whole or in part in the capacity of:

11 (1) A person who is licensed, certified, registered, or
12 otherwise authorized by federal or state law to
13 provide an item or service that constitutes health
14 care in the ordinary course of business, or practice
15 of a profession;

16 (2) A federal, state, or employer-sponsored program that
17 directly provides items or services that constitute
18 health care to beneficiaries; or

19 (3) An officer, employee, or agent of a person described
20 in paragraph (1) or (2).

21 "Health oversight agency" means a person who, with respect
22 to any protected health information, receives, creates, uses,



1 maintains, or discloses the information while acting in whole or
2 in part in the capacity of:

3 (1) A person who performs or oversees the performance of
4 an assessment, evaluation, determination, or
5 investigation, relating to the licensing,
6 accreditation, or credentialing of health care
7 providers; or

8 (2) A person who:

9 (A) Performs or oversees the performance of an audit,
10 assessment, evaluation, determination, or
11 investigation relating to the effectiveness of,
12 compliance with, or applicability of, legal,
13 fiscal, medical, or scientific standards or
14 aspects of performance related to the delivery
15 of, or payment for, health care; and

16 (B) Is a public agency, acting on behalf of a public
17 agency, acting pursuant to a requirement of a
18 public agency, or carrying out activities under a
19 federal or state law governing the assessment,
20 evaluation, determination, investigation, or
21 prosecution for violations of paragraph (1).



1 "Health plan" means any health insurance plan, including
2 any hospital or medical service plan, dental or other health
3 service plan or health maintenance organization plan, provider-
4 sponsored organization, or other program providing or arranging
5 for the provision of health benefits, whether or not funded
6 through the purchase of insurance.

7 "Health researcher" means a person, or an officer, employee
8 or independent contractor of a person, who receives protected
9 health information as part of a systematic investigation,
10 testing, or evaluation designed to develop or contribute to
11 generalized scientific and clinical knowledge.

12 "Individual's designated representative" means a person who
13 is authorized by law (based on grounds other than the minority
14 of an individual), or by an instrument recognized under law, to
15 act as an agent, attorney, guardian, proxy, or other legal
16 representative of a protected individual. The term includes a
17 health care power of attorney.

18 "Institutional review board" means a research committee
19 established and operating in accord with Title 45 Code of
20 Federal Regulations 46 Sections 107, 108, 109, and 115.

21 "Insurer" means any person regulated under chapter 432D,
22 article 1 of chapter 432, any group that has purchased a group



1 insurance policy issued by a person regulated under chapter
2 432D, and any person regulated under article 10A of chapter 431,
3 other than a life insurer, disability income insurer, or long-
4 term care insurer.

5 "Law enforcement inquiry" means a lawful investigation
6 conducted by an appropriate government agency or official
7 inquiring into a violation of, or failure to comply with, any
8 civil or administrative statute or any regulation, rule, or
9 order issued pursuant to such a statute. It does not include a
10 lawful criminal investigation or prosecution conducted by the
11 county prosecutors or the department of the attorney general.

12 "Nonidentifiable health information" means any information
13 that meets all of the following criteria: would otherwise be
14 protected health information except that the information in and
15 of itself does not reveal the identity of the individual whose
16 health or health care is the subject of the information and will
17 not be used in any way that would identify the subjects of the
18 information or would create protected health information.

19 "Office of information practices" shall be as defined by
20 chapter 92F.

21 "Person" means a government, governmental subdivision,
22 agency or authority, corporation, company, association, firm,



1 partnership, insurer, estate, trust, joint venture, individual,
2 individual representative, and any other legal entity.

3 "Protected health information" means any information,
4 identifiable to an individual, including demographic
5 information, whether or not recorded in any form or medium that
6 relates directly or indirectly to the past, present, or future:

- 7 (1) Physical or mental health or condition of a person,
8 including tissue and genetic information;
9 (2) Provision of health care to an individual; or
10 (3) Payment for the provision of health care to an
11 individual.

12 "Public health authority" means the department of health.

13 "Qualified health care operations" means:

- 14 (1) Only those activities conducted by or on behalf of a
15 health plan or health care provider for the purpose of
16 carrying out the management functions of a health care
17 provider or health plan, or implementing the terms of
18 a contract for health plan benefits as follows:

- 19 (A) Payment, which means the activities undertaken by
20 a health plan or provider which are reasonably
21 necessary to determine responsibility for



- 1 coverage, services, and the actual payment for
2 services, if any;
- 3 (B) Conducting quality assurance activities or
4 outcomes assessments;
- 5 (C) Reviewing the competence or qualifications of
6 health care professionals;
- 7 (D) Performing accreditation, licensing, or
8 credentialing activities;
- 9 (E) Analyzing health plan claims or health care
10 records data;
- 11 (F) Evaluating provider clinical performance;
- 12 (G) Carrying out utilization management; or
- 13 (H) Conducting or arranging for auditing services in
14 accordance with statute, rule, or accreditation
15 requirements;
- 16 (2) A qualified health care operation shall:
- 17 (A) Be an operation which cannot be carried on with
18 reasonable effectiveness and efficiency without
19 identifiable patient information;
- 20 (B) Be limited to only that protected health
21 information collected under the terms of the
22 contract for health plan benefits and without



1 which the operation cannot be carried on with

2 reasonable effectiveness and efficiency;

3 (C) Be limited to the minimum amount of protected
4 health information, including the minimum number
5 of records and the minimum number of documents
6 within each patient's record, necessary to carry
7 on the operation with reasonable effectiveness
8 and efficiency; and

9 (D) Limit the handling and examination of protected
10 health information to those persons who are
11 reasonably well qualified, by training,
12 credentials, or experience, to conduct the phase
13 of the operation in which they are involved.

14 "Surrogate" means a person, other than an individual's
15 designated representative or relative, who is authorized to make
16 a health-care decision for the individual.

17 "Treatment" means the provision of health care by, or the
18 coordination of health care among, health care providers, or the
19 referral of a patient from one provider to another, or
20 coordination of health care or other services among health care
21 providers and third parties authorized by the health plan or the
22 plan member.



1 "Unique patient identifier" means a number or alpha-numeric
2 string assigned to an individual, which can be or is used to
3 identify an individual's protected health information.

4 "Writing" means a written form that is either paper- or
5 computer-based, and includes electronic signatures.

6 **PART II. INDIVIDUAL'S RIGHTS**

7 **§ -11 Inspection and copying of protected health**

8 **information.** (a) For the purposes of this section only,
9 "entity" means a health care provider, health plan, employer,
10 health care data organization, insurer, or educational
11 institution.

12 (b) At the request in writing of an individual and except
13 as provided in subsection (c), an entity shall permit an
14 individual who is the subject of protected health information or
15 the individual's designee, to inspect and copy protected health
16 information concerning the individual, including records created
17 under section -12, that the entity maintains. The entity
18 shall adopt appropriate procedures to be followed for the
19 inspection or copying and may require an individual to pay
20 reasonable costs associated with the inspection or copying.

21 (c) Unless ordered by a court of competent jurisdiction,
22 an entity is not required to permit the inspection or copying of



1 protected health information if any of the following conditions
2 are met:

3 (1) The entity determines that the disclosure of the
4 information could reasonably be expected to endanger
5 the life or physical safety of, or cause substantial
6 mental harm to, the individual who is the subject of
7 the record;

8 (2) The information identifies, or could reasonably lead
9 to the identification of, a person who provided
10 information under a promise of confidentiality
11 concerning the individual who is the subject of the
12 information unless the confidential source can be
13 protected by redaction or other similar means;

14 (3) The information is protected from discovery as
15 provided in section 624-25.5; or

16 (4) The information was collected for or during a clinical
17 trial monitored by an institutional review board, the
18 trial is not complete, and the researcher reasonably
19 believes that access would harm the conduct of the
20 trial.



1 (d) If an entity denies a request for inspection or
2 copying pursuant to subsection (c), the entity shall inform the
3 individual in writing of:

- 4 (1) The reasons for the denial of the request for
5 inspection or copying;
- 6 (2) Any procedures for further review of the denial; and
- 7 (3) The individual's right to file with the entity a
8 concise statement setting forth the request for
9 inspection or copying.

10 (e) If an individual has filed a statement under
11 subsection (d)(3), the entity in any subsequent disclosure of
12 the portion of the information requested under subsection (b)
13 shall include:

- 14 (1) A copy of the individual's statement; and
- 15 (2) A concise statement of the reasons for denying the
16 request for inspection or copying.

17 (f) An entity shall permit the inspection and copying
18 under subsection (b) of any reasonably segregable portion of a
19 record after deletion of any portion that is exempt under
20 subsection (c).

21 (g) An entity shall comply with or deny, in accordance
22 with subsection (d), a request for inspection or copying of



1 protected health information under this section not later than
2 thirty days after the date on which the entity or agent receives
3 the request.

4 (h) An agent of an entity shall not be required to provide
5 for the inspection and copying of protected health information,
6 except where:

7 (1) The protected health information is retained by the
8 agent; and

9 (2) The agent has received in writing a request from the
10 entity involved to fulfill the requirements of this
11 section, at which time this information shall be
12 provided to the individual. The agent shall comply
13 with subsection (g) with respect to any such
14 information.

15 (i) The entity shall afford at least one level of appeal
16 by parties not involved in the original decision.

17 (j) This section shall not be construed to require that an
18 entity described in subsection (a) conduct a formal, informal,
19 or other hearing or proceeding concerning a request for
20 inspection or copying of protected health information.

21 (k) If an entity denies an individual's request for
22 copying pursuant to subsection (c), or if an individual so



1 requests, the entity shall permit the inspection or copying of
2 the requested protected health information by the individual's
3 designated representative, upon presentation of a proper
4 authorization signed by the individual, unless it is patently
5 clear that doing so would defeat the purpose for which the
6 entity originally denied the individual's request for inspection
7 and copying.

8 **§ -12 Additions to protected health information.** A
9 health care provider is the owner of the medical records in the
10 health care provider's possession that were created by the
11 health care provider in treating a patient. An individual or
12 the individual's authorized representative may request in
13 writing that a health care provider that generated certain
14 health care information append additional information to the
15 record in order to improve the accuracy or completeness of the
16 information; provided that appending this information does not
17 erase or obliterate any of the original information. A health
18 care provider shall do one of the following:

- 19 (1) Append the information as requested; or
20 (2) Notify the individual that the request has been
21 denied, the reason for the denial, and that the
22 individual may file a statement of reasonable length



1 explaining the correctness or relevance of existing
2 information or as to the addition of new information.
3 The statement or copies shall be appended to the
4 medical record and at all times accompany that part of
5 the information in contention.

6 **§ -13 Notice of confidentiality practices; forms of**
7 **notices.** (a) For the purposes of this section only, "entity"
8 means health care provider, health care data organization,
9 health plan, health oversight agency, public health authority,
10 employer, insurer, health researcher, or educational
11 institution.

12 (b) An entity shall prominently post or provide the
13 current notice of the entity's confidentiality practices. The
14 notice shall be printed in clear type and composed in plain
15 language. This notice shall be given pursuant to the
16 requirements of section -22. For the purpose of informing
17 each individual of the importance of the notice and educating
18 the individual about the individual's rights under this chapter,
19 the notice shall contain the following language, placed
20 prominently at the beginning:

21 IMPORTANT: THIS NOTICE DEALS WITH THE SHARING

22 OF INFORMATION FROM YOUR MEDICAL RECORDS. PLEASE READ



1 IT CAREFULLY. This notice describes your
2 confidentiality rights as they relate to information
3 from your medical records and explains the circumstances
4 under which information from your medical records may be
5 shared with others. The information in this notice also
6 applies to others covered under your health plan, such
7 as your spouse or children. If you do not understand
8 the terms of this notice, please ask for further
9 explanation.

10 In addition, as shall be appropriate to the size and nature of
11 the entity, the notice shall include information about:

12 (1) A description of an individual's rights with respect
13 to protected health information which shall contain at
14 a minimum, the following:

15 (A) An individual's right to inspect and copy their
16 record;

17 (B) An individual's right to request that a health
18 care provider append information to their medical
19 record; and

20 (C) An individual's right to receive this notice by
21 each health plan upon enrollment, annually, and



1 when confidentiality practices are substantially
2 amended.

3 (2) The uses and disclosures of protected health
4 information authorized under this chapter including
5 information about:

6 (A) Payment;

7 (B) Conducting quality assurance activities or
8 outcomes assessments;

9 (C) Reviewing the competence or qualifications of
10 health care professionals;

11 (D) Performing accreditation, licensing, or
12 credentialing activities;

13 (E) Analyzing health plan claims or health care
14 records data;

15 (F) Evaluating provider clinical performance;

16 (G) Carrying out utilization management; or

17 (H) Conducting or arranged for auditing services in
18 accordance with statute, rule or accreditation
19 requirements;

20 (3) The right of the individual to limit disclosure of
21 protected health information by deciding not to use
22 any health insurance or other third party payment as



1 payment for the service, as set forth in section

2 -21(c);

3 (4) The procedures for giving consent to disclosures of
4 protected health information and for revoking the
5 consent to disclose;

6 (5) The description of procedures established by the
7 entity for the exercise of the individual's rights
8 required under this chapter; and

9 (6) The right to obtain a copy of the notice of
10 confidentiality practices required under this chapter.

11 (b) The actual procedures established by the entities for
12 the exercise of individual rights under this part shall be
13 available in writing upon request.

14 **§ -14 Establishment of safeguards.** (a) An entity shall
15 establish and maintain administrative, technical, and physical
16 safeguards that are appropriate to the size and nature of the
17 entity establishing the safeguards, and that are appropriate to
18 protect the confidentiality, security, accuracy, and integrity
19 of protected health information created, received, obtained,
20 maintained, used, transmitted, or disposed of by the entity.

21 (b) The office of information practices shall adopt rules
22 pursuant to chapter 91 to implement subsection (a).



1 **PART III. RESTRICTIONS ON USE AND DISCLOSURE**

2 **§ -21 General rules regarding use and disclosure. (a)**

3 An entity shall not use or disclose protected health information
4 except as authorized under this part and under part IV.

5 Disclosure of health information in the form of nonidentifiable
6 health information shall not be construed as a disclosure of
7 protected health information.

8 (b) For the purpose of treatment or qualified health care
9 operations, an entity may only use or disclose protected health
10 information if the use or disclosure is properly noticed
11 pursuant to sections -13 and -22. For all other uses and
12 disclosures, an entity may only use or disclose protected health
13 information, if the use or disclosure is properly consented to
14 pursuant to section -23. Disclosure to agents of an entity
15 shall be considered as a disclosure within an entity.

16 (c) If an individual does not want protected health
17 information released pursuant to section (b), the individual
18 shall advise the provider prior to the delivery of services that
19 the relevant protected health information shall not be disclosed
20 pursuant to subsection (b), and the individual shall pay the
21 health care provider directly for health care services. A
22 health plan may decline to cover particular health care services



1 if an individual has refused to allow the release of protected
2 health care information pertaining to those particular health
3 care services. Protected health information related to health
4 care services paid for directly by the individual shall not be
5 disclosed without a consent.

6 (d) An agent who receives protected health information
7 from an entity shall be subject to all rules of disclosure and
8 safeguard requirements under this part.

9 (e) Every use and disclosure of protected health
10 information shall be limited to the purpose for which it was
11 collected. Any other use without a valid consent to disclose
12 shall be an unauthorized disclosure.

13 (f) Nothing in this part permitting the disclosure of
14 protected health information shall be construed to require
15 disclosure.

16 (g) An entity may disclose protected health information to
17 an employee or agent of the entity not otherwise authorized to
18 receive such information for purposes of creating
19 nonidentifiable information, if the entity prohibits the
20 employee or agent of the entity from using or disclosing the
21 protected health information for purposes other than the sole



1 purpose of creating nonidentifiable information, as specified by
2 the entity.

3 (h) Any individual or entity who manipulates or uses
4 nonidentifiable health information to identify an individual,
5 shall be deemed to have disclosed protected health information.
6 The disclosure or transmission of a unique patient identifier
7 shall be deemed to be a disclosure of protected health
8 information.

9 **§ -22 Giving notice regarding disclosure of protected**
10 **health information for treatment or qualified health care**
11 **operations.** (a) The notice required by section -13 shall
12 be:

13 (1) Given by each health plan upon enrollment, annually,
14 and when confidentiality practices are substantially
15 amended, to each individual who is eligible to receive
16 care under the health plan, or to the individual's
17 parent or guardian if the individual is a minor or
18 incompetent; and

19 (2) Posted in a conspicuous place or provided by an entity
20 other than a health plan.

21 (b) For each new enrollment or re-enrollment by an
22 individual in a health plan, on or after the effective date of



1 this Act, a health plan shall make reasonable efforts to obtain
2 the individual's signature on the notice of confidentiality
3 practices. The notice to be signed shall state that the
4 individual is signing on behalf of the individual and all others
5 covered by the individual's health plan. If the plan is unable
6 to obtain the aforementioned signature, the plan shall note the
7 reason for the failure to obtain said signature. The lack of a
8 signed notice of confidentiality practices shall not justify a
9 denial of coverage of a claim, nor shall it limit a health
10 plan's access to information necessary for treatment and
11 qualified health care operations; provided that the individual
12 may elect to keep the records from being disclosed by paying for
13 the subject health care services, as provided under section
14 -21(c).

15 (c) Except as provided in this chapter, the notice
16 required by this section and section -13 shall not be
17 construed as a waiver of any rights that the individual has
18 under other federal or state laws, rules of evidence, or common
19 law.

20 (d) For the purposes of this subsection, "reasonable
21 efforts" may include requiring the employer to present the
22 notice to the individual and to request a signature, or mailing



1 the notice to the individual with instructions to sign and
2 return the notice within a specified period of time.

3 **§ -23** Authorization to disclose protected health
4 information other than for treatment, payment, or qualified
5 health care operations. (a) An entity may disclose protected
6 health information for purposes other than those noticed under
7 section -22, pursuant to a separate written authorization to
8 disclose executed by the individual who is the subject of the
9 information. The authorization must meet the requirements of
10 subsection (b).

11 (b) To be valid, an authorization shall be separate from
12 any other notice or authorization required by this part, shall
13 be either in writing, dated, and signed by the individual, or in
14 electronic form, dated, and authenticated by the individual
15 using a unique identifier, shall not have been revoked, and
16 shall do the following:

- 17 (1) Identify the person or entity authorized to disclose
18 protected health information;
- 19 (2) Identify the individual who is the subject of the
20 protected health information;
- 21 (3) Describe the nature of and the time span of the
22 protected health information to be disclosed;



1 (4) Identify the person to whom the information is to be
2 disclosed;

3 (5) Describe the purpose of the disclosure;

4 (6) State that it is subject to revocation by the
5 individual and indicate that the consent to disclose
6 is valid until revocation by the individual; and

7 (7) Include the date at which the consent to disclose
8 ends.

9 (c) An individual may revoke in writing an authorization
10 under this section at any time. An authorization obtained by a
11 health plan under this section is deemed to be revoked at the
12 time of the cancellation or nonrenewal of enrollment in the
13 health plan. An entity that discloses protected health
14 information pursuant to an authorization that has been revoked
15 under this subsection shall not be subject to any liability or
16 penalty under this part for the disclosure if that entity acted
17 in good faith and had no actual or constructive notice of the
18 revocation.

19 (d) Sections -31 to -39 provide for exceptions to
20 the requirement for the authorization.

21 (e) A recipient of protected health information pursuant
22 to an authorization under this section may use the information



1 solely to carry out the purpose for which the information was
2 authorized for release.

3 (f) Each entity collecting or storing protected health
4 information shall maintain for seven years, as part of an
5 individual's protected health information, a record of each
6 authorization by the individual and any revocation of
7 authorization by the individual.

8 **PART IV. EXCEPTED USES AND DISCLOSURES**

9 **§ -31 Coroner or medical examiner.** When a coroner or
10 medical examiner or one of their duly appointed deputies seek
11 protected health information for the purpose of inquiry into and
12 determination of the cause, manner, and circumstances of a
13 death, any person shall provide the requested protected health
14 information to the coroner or medical examiner or to the duly
15 appointed deputies without undue delay. If a coroner or medical
16 examiner or their duly appointed deputies receives protected
17 health information, this protected health information shall
18 remain protected health information unless it is attached to or
19 otherwise made a part of a coroner's or medical examiner's
20 official report. Health information attached to or otherwise
21 made a part of a coroner's or medical examiner's official report
22 shall be exempt from this chapter.



1 **§ -32 Individual's designated representative, relative,**
2 **or surrogate, and directory information.** (a) A health care
3 provider, or a person who receives protected health information
4 under subsection (b), may disclose protected health information
5 regarding an individual to an individual's designated
6 representative, relative, or surrogate if:

7 (1) The individual who is the subject of the information:

8 (A) Has been notified of the individual's right to
9 object to the disclosure and the individual has
10 not objected to the disclosure; or

11 (B) Is in a physical or mental condition such that
12 the individual is not capable of objecting, and
13 there are no prior indications that the
14 individual would object; and

15 (2) The information disclosed is for the purpose of
16 providing health care to that individual; or

17 (3) The disclosure of the protected health information is
18 consistent with good medical or professional practice.

19 (b) Except as provided in subsection (d), a health care
20 provider may disclose the information described in subsection

21 (c) to any other person if the individual who is the subject of
22 the information:



- 1 (1) Has been notified of the individual's right to object
- 2 and the individual has not objected to the disclosure;
- 3 or
- 4 (2) Is in a physical or mental condition such that the
- 5 individual is not capable of objecting; and
- 6 (A) The individual's designated representative,
- 7 relative, or surrogate has not objected; and
- 8 (B) There are no prior indications that the
- 9 individual would object.
- 10 (c) Information that may be disclosed in subsection (b) is
- 11 only that information that consists of any of the following
- 12 items:
- 13 (1) The name of the individual who is the subject of the
- 14 information;
- 15 (2) The general health status of the individual, described
- 16 as critical, poor, fair, stable, or satisfactory or in
- 17 terms denoting similar conditions; or
- 18 (3) The location of the individual on premises controlled
- 19 by a provider. This disclosure shall not be made if
- 20 the information would reveal specific information
- 21 about the physical or mental condition of the



1 individual, unless the individual expressly authorizes
2 the disclosure.

3 (d) A disclosure shall not be made under this section if
4 the health care provider involved has reason to believe that the
5 disclosure of this information could lead to physical or mental
6 harm to the individual, unless the individual expressly
7 authorizes the disclosure.

8 **§ -33 Identification of deceased individuals.** A health
9 care provider may disclose protected health information if the
10 disclosure is necessary to assist in the identification or safe
11 handling of a deceased individual.

12 **§ -34 Emergency circumstances.** Any person who creates
13 or receives protected health information under this chapter may
14 use or disclose protected health information in emergency
15 circumstances when the use or disclosure is necessary to protect
16 the health or safety of the individual who is the subject of the
17 information from serious, imminent harm. A disclosure made in
18 the good faith belief that the use or disclosure was necessary
19 to protect the health or safety of an individual from serious,
20 imminent harm shall not be a violation of this chapter.



1 **§ -35 Disclosures for health oversight.** (a) Any person
2 may disclose protected health information to a health oversight
3 agency for purposes of an oversight function authorized by law.

4 (b) For purposes of this section, the individual with
5 authority to authorize the health oversight function involved
6 shall provide to the person described in subsection (a) a
7 statement that the protected health information is being sought
8 for a legally authorized oversight function.

9 (c) Protected health information about an individual that
10 was obtained under this section may not be used in, or disclosed
11 to any person for use in, an administrative, civil, or criminal
12 action or investigation directed against the individual unless
13 the action or investigation arises out of and is directly
14 related to:

15 (1) The receipt of health care or payment for health care;

16 (2) An action involving a fraudulent claim related to
17 health; or

18 (3) An action involving oversight of a public health
19 authority or a health researcher.

20 (d) Protected health information disclosed for purposes of
21 this section remains protected health information and shall not



1 be further disclosed by the receiving health oversight agency,
2 except as permitted under this section.

3 **§ -36 Public health.** (a) Any person or entity may
4 disclose protected health information to a public health
5 authority or other person authorized by law, for use in a
6 legally authorized:

- 7 (1) Disease or injury report;
8 (2) Public health surveillance;
9 (3) Public health investigation or intervention; or
10 (4) Health or disease registry.

11 (b) The disclosure of protected health information,
12 pursuant this section, to a public health authority or other
13 person authorized by law shall not be a violation of this part.

14 (c) Protected health information disclosed for purposes of
15 this section remains protected health information and shall not
16 be further disclosed by the receiving authority or person,
17 except as permitted under this section.

18 **§ -37 Health research.** (a) A health care provider,
19 health plan, public health authority, employer, insurer, or
20 educational institution may disclose protected health
21 information to a health researcher if the following requirements
22 are met:



1 (1) The research shall have been approved by an
2 institutional review board. In evaluating a research
3 proposal, an institutional review board shall require
4 that the proposal demonstrate a clear purpose,
5 scientific integrity, and a realistic plan for
6 maintaining the confidentiality of protected health
7 information. Research not otherwise subjected by
8 federal regulation to institutional review board
9 review shall be subject only to the review
10 requirements of this paragraph;

11 (2) The health care provider, health plan, public health
12 authority, employer, insurer, or educational
13 institution shall only disclose protected health
14 information which it has previously created or
15 collected; and

16 (3) The holder of protected health information shall keep
17 a record of all health researchers to whom protected
18 health information has been made available.

19 (b) A health researcher who receives protected health
20 information shall remove and destroy, at the earliest
21 opportunity consistent with the purposes of the project



1 involved, any information that would enable an individual to be
2 identified.

3 (c) A health researcher who receives protected health
4 information shall not disclose or use the protected health
5 information or unique patient identifiers for any purposes not
6 reviewed by an institutional review board under this part or for
7 any purposes other than the health research project for which
8 the information was obtained, except that the health researcher
9 may disclose the information pursuant to section -35(a).

10 **§ -38 Disclosure in civil, judicial, and administrative**
11 **procedures.** (a) Protected health information may be disclosed
12 pursuant to a discovery request or subpoena in a civil action
13 brought in a state court or a request or subpoena related to a
14 state administrative proceeding, only if the disclosure is made
15 pursuant to a court order as provided for in subsection (b) or
16 to a written authorization under section -23.

17 (b) A court order issued under this section shall:

18 (1) Provide that the protected health information involved
19 is subject to court protection;

20 (2) Specify to whom the information may be disclosed;

21 (3) Specify that the information may not otherwise be
22 disclosed or used; and



1 (4) Meet any other requirements that the court determines
2 are needed to protect the confidentiality of the
3 information.

4 (c) This section shall not apply in a case in which the
5 protected health information sought under the discovery request
6 or subpoena is:

7 (1) Nonidentifiable health information; or

8 (2) Related to a party to the litigation whose medical
9 condition is at issue.

10 (d) The release of any protected health information under
11 this section shall not violate this part.

12 **§ -39 Disclosure for civil or administrative law**

13 **enforcement purposes.** (a) For the purposes of this subsection
14 only, "entity" means a health care provider, health plan, health
15 oversight agency, employer, insurer, and educational
16 institution.

17 (b) Except as to disclosures to a health oversight agency,
18 which are governed by section -35, an entity or person who
19 receives protected health information pursuant to sections
20 -23 and -31 through -37, may disclose protected health
21 information under this section, if the disclosure is pursuant
22 to:



1 (1) An administrative subpoena or summons or judicial
2 subpoena;

3 (2) Consent in accordance with section -23; or

4 (3) A court order.

5 (c) A subpoena or summons for a disclosure under
6 subsection (b)(1) shall only be issued if the civil or
7 administrative law enforcement agency involved shows that there
8 is probable cause to believe that the information is relevant to
9 a legitimate law enforcement inquiry.

10 (d) When the matter or need for which protected health
11 information was disclosed to a civil or administrative law
12 enforcement agency under subsection (b) has concluded, including
13 any derivative matters arising from the matter or need, the
14 civil or administrative law enforcement agency shall either
15 destroy the protected health information, or return all of the
16 protected health information to the person from whom it was
17 obtained.

18 (e) To the extent practicable, and consistent with the
19 requirements of due process, a civil or administrative law
20 enforcement agency shall redact personally identifying
21 information from protected health information prior to the



1 public disclosure of the protected information in a judicial or
2 administrative proceeding.

3 (f) Protected health information obtained by a civil or
4 administrative law enforcement agency pursuant to this section
5 may only be used for purposes of a legitimate law enforcement
6 activity.

7 (g) If protected health information is obtained without
8 meeting the requirements of subsection (b)(1), (2), or (3), any
9 information that is unlawfully obtained shall be excluded from
10 court proceedings unless the defendant requests otherwise.

11 **§ -40 Payment card and electronic payment transaction.**

12 (a) If an individual pays for health care by presenting a
13 debit, credit, or other payment card or account number, or by
14 any other electronic payment means, the entity receiving payment
15 may disclose to a person described in subsection (b) only such
16 protected health information about the individual as is
17 necessary for the processing of the payment transaction or the
18 billing or collection of amounts charged to, debited from, or
19 otherwise paid by, the individual using the card, number, or
20 other electronic means.

21 (b) A person who is a debit, credit, or other payment card
22 issuer, or is otherwise directly involved in the processing of



1 payment transactions involving such cards or other electronic
2 payment transactions, or is otherwise directly involved in the
3 billing or collection of amounts paid through these means, may
4 use or disclose protected health information about an individual
5 that has been disclosed in accordance with subsection (a) only
6 when necessary for:

- 7 (1) The settlement, billing, or collection of amounts
8 charged to, debited from, or otherwise paid by the
9 individual using a debit, credit, or other payment
10 card or account number, or by other electronic payment
11 means;
- 12 (2) The transfer of receivables, accounts, or interest
13 therein;
- 14 (3) The internal audit of the debit, credit, or other
15 payment card account information;
- 16 (4) Compliance with federal, state, or county law; or
- 17 (5) Compliance with a properly authorized civil, criminal,
18 or regulatory investigation by federal, state, or
19 county authorities as governed by the requirements of
20 this section.

21 **§ -41 Standards for electronic disclosures.** The office
22 of information practices shall adopt rules to establish



1 standards for disclosing, authorizing, and authenticating,
2 protected health information in electronic form consistent with
3 this part.

4 **§ -42 Rights of minors.** (a) In the case of an
5 individual who is eighteen years of age or older, all rights of
6 an individual under this chapter shall be exercised by the
7 individual.

8 (b) In the case of an individual of any age who, acting
9 alone, can obtain a type of health care without violating any
10 applicable federal or state law, and who has sought this care,
11 the individual shall exercise all rights of an individual under
12 this chapter with respect to health care.

13 (c) Except as provided in subsection (b), in the case of
14 an individual who is:

15 (1) Under fourteen years of age, all of the individual's
16 rights under this chapter shall be exercised only
17 through the parent or legal guardian; or

18 (2) At least fourteen but under eighteen years of age, the
19 rights of inspection and amendment, and the right to
20 authorize use and disclosure of protected health
21 information of the individual may be exercised by the
22 individual, or by the parent or legal guardian of the



1 individual. If the individual and the parent or legal
2 guardian do not agree as to whether to authorize the
3 use or disclosure of protected health information of
4 the individual, the individual's authorization or
5 revocation of authorization shall control.

6 **§ -43 Deceased individuals.** This chapter shall continue
7 to apply to protected health information concerning a deceased
8 individual following the death of that individual. A person who
9 is authorized by law or by an instrument recognized under law,
10 to act as a personal representative of the estate of a deceased
11 individual, or otherwise to exercise the rights of the deceased
12 individual, to the extent so authorized, may exercise and
13 discharge the rights of the deceased individual under this
14 chapter.

15 **PART V. SANCTIONS**

16 **§ -51 Wrongful disclosure of protected health**
17 **information.** (a) A person who knowingly or intentionally
18 obtains protected health information relating to an individual
19 or discloses protected health information to another person in
20 violation of this chapter shall be guilty of a class C felony.
21 (b) A person who knowingly or intentionally sells,
22 transfers, or uses protected health information for commercial



1 advantage, personal gain, or malicious harm, in violation of
2 this chapter shall be guilty of a class B felony.

3 **§ -52 Civil actions by individuals.** (a) Any
4 individual whose rights under this chapter have been violated
5 may bring a civil action against the person or entity
6 responsible for the violation.

7 (b) In any civil action brought under this section, if the
8 court finds a violation of an individual's rights under this
9 chapter, the court may award:

10 (1) Injunctive relief, including enjoining a person or
11 entity from engaging in a practice that violates this
12 chapter;

13 (2) Equitable relief;

14 (3) Compensatory damages for injuries suffered by the
15 individual. Injuries compensable under this section
16 may include, but are not limited to, personal injury
17 including emotional distress, reputational injury,
18 injury to property, and consequential damages;

19 (4) Punitive damages, as appropriate;

20 (5) Costs of the action;

21 (6) Attorneys' fees, as appropriate; and

22 (7) Any other relief the court finds appropriate.



1 (c) No action may be commenced under this section after
2 the time period stated in section 657-7.

3 **§ -53 Cease and desist orders; civil penalty.** (a) A
4 court shall issue and cause to be served upon a person, who has
5 violated any provision of this chapter, a copy of the court's
6 findings and an order requiring the person to cease and desist
7 from violating this chapter, or to otherwise comply with the
8 requirements of this chapter. The court may also order any one
9 or more of the following:

10 (1) For any violation of this chapter, payment of a civil
11 penalty of not more than \$500 for each and every act
12 or violation but not to exceed \$5,000 in the aggregate
13 for multiple violations;

14 (2) For a knowing violation of this chapter, payment of a
15 civil penalty of not more than \$25,000 for each and
16 every act or violation but not to exceed \$100,000 in
17 the aggregate for multiple violations; and

18 (3) For violations of this chapter that have occurred with
19 such frequency as to constitute a general business
20 practice, a civil penalty of \$100,000.

21 (b) Any person who violates a cease and desist order or
22 injunction issued under this section may be subject to a civil



1 penalty of not more than \$10,000 for each and every act in
2 violation of the cease and desist order.

3 (c) No order or injunction issued under this section shall
4 in any way relieve or absolve any person affected by the order
5 from any other liability, penalty, or forfeiture required by
6 law.

7 (d) Any civil penalties collected under this section shall
8 be deposited into the general fund.

9 **§ -54 Prevention and deterrence.** To promote the
10 prevention and deterrence of acts or omissions that violate laws
11 designed to safeguard the protected health information in a
12 manner consistent with this chapter, the director of the office
13 of information practices, with any other appropriate individual,
14 organization, or agency, may provide advice, training, technical
15 assistance, and guidance regarding ways to prevent improper
16 disclosure of protected health information.

17 **§ -55 Relationship to other laws.** (a) Nothing in this
18 chapter shall be construed to preempt or modify any provisions
19 of state law concerning a privilege of a witness or person in a
20 court of the State. Receipt of notice pursuant to section -22
21 or consent to disclose pursuant to section -23 shall not be
22 construed as a waiver of these privileges.



- 1 (b) Nothing in this chapter shall be construed to preempt,
2 supersede, or modify the operation of any state law that:
- 3 (1) Provides for the reporting of vital statistics such as
4 birth or death information;
- 5 (2) Requires the reporting of abuse or neglect information
6 about any individual;
- 7 (3) Relates to public or mental health and that prevents
8 or otherwise restricts disclosure of information
9 otherwise permissible under this chapter, except that
10 if this chapter is more protective of information, it
11 shall prevail;
- 12 (4) Governs a minor's right to access protected health
13 information or health care services; or
- 14 (5) Meets any other requirements that the court determines
15 are needed to protect the confidentiality of the
16 information."

17 SECTION 2. If any provision of this Act, or the
18 application thereof to any person or circumstance is held
19 invalid, the invalidity does not affect other provisions or
20 applications of the Act, which can be given effect without the
21 invalid provision or application, and to this end the provisions
22 of this Act are severable.



1 SECTION 3. This Act shall take effect on July 1, 2011.

2

INTRODUCED BY:

Steve Sam

JAN 26 2011



Report Title:

Health Care Information Privacy

Description:

Stipulates conditions under which health care information can be disclosed. Provides penalties.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

