
A BILL FOR AN ACT

RELATING TO HEALTH CARE PRIVACY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 **"CHAPTER**

5 **PRIVACY OF HEALTH CARE INFORMATION**

6 **PART I. GENERAL PROVISIONS**

7 **§ -1 Definitions.** As used in this chapter, except as
8 otherwise specifically provided:

9 "Accrediting body" means a committee, organization, or
10 institution that has been authorized by law or is recognized by
11 a health care regulating authority as an accrediting entity or
12 any other entity that has been similarly authorized or
13 recognized by law to perform specific accreditation, licensing,
14 or credentialing activities.

15 "Agent" means a person who represents and acts for another
16 under a contract or relationship of agency, or whose function is
17 to bring about, modify, affect, accept performance of, or



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 or 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, that has one or more regular individuals in its
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; or

18 (2) Any sale or dispensing of a drug, device, equipment,
19 or other health care-related item to an individual, or
20 for the use of an individual pursuant to a
21 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 of
14 an individual, or by an instrument, including a health care
15 power of attorney, recognized under law, to act as an agent,
16 attorney, guardian, proxy, or other legal representative of a
17 protected individual.

18 "Institutional review board" means a research committee
19 established and operating in accord with Title 45 Code of
20 Federal Regulations Part 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 county
11 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" means the office of
20 information practices established by 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, or 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 an
8 individual, 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 health care provider, that are
21 reasonably necessary to determine responsibility



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



1 contract for health plan benefits and without
2 which the operation cannot be carried on with
3 reasonable effectiveness and efficiency;

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

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

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

18 "Treatment" means the provision of health care by, or the
19 coordination of health care among, health care providers, or the
20 referral of a patient from one health care provider to another,
21 or coordination of health care or other services among health



1 care providers and third parties authorized by the health plan
2 or the plan member.

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

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

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

9 **§ -11 Inspection and copying of protected health**

10 **information.** (a) For the purposes of this section only,

11 "entity" means a health care provider, health plan, employer,
12 health care data organization, insurer, or educational
13 institution.

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



1 information and may require an individual to pay reasonable
2 costs associated with the inspection or copying.

3 (c) Unless ordered by a court of competent jurisdiction,
4 an entity is not required to permit the inspection or copying of
5 protected health information if any of the following conditions
6 apply:

7 (1) The entity determines that the disclosure of the
8 protected health information could reasonably be
9 expected to endanger the life or physical safety of,
10 or cause substantial mental harm to, the individual
11 who is the subject of the protected health
12 information;

13 (2) The protected health information identifies, or could
14 reasonably lead to the identification of, a person who
15 provided information under a promise of
16 confidentiality concerning the individual who is the
17 subject of the protected health information unless the
18 confidential source can be protected by redaction or
19 other similar means;

20 (3) The protected health information is protected from
21 discovery as provided in section 624-25.5; or



1 (4) The protected health information was collected for or
2 during a clinical trial monitored by an institutional
3 review board, the trial is not complete, and the
4 health researcher reasonably believes that access
5 would harm the conduct of the trial.

6 (d) If an entity denies a request for inspection or
7 copying of protected health information pursuant to subsection
8 (c), the entity shall inform the individual in writing of:

- 9 (1) The reasons for the denial of the request for
10 inspection or copying;
- 11 (2) Any procedures for further review of the denial; and
- 12 (3) The individual's right to file with the entity a
13 concise statement setting forth the request for
14 inspection or copying.

15 (e) If an individual has filed a statement under
16 subsection (d)(3), the entity, in any subsequent disclosure of
17 the portion of the information requested under subsection (b),
18 shall include:

- 19 (1) A copy of the individual's statement; and
- 20 (2) A concise statement of the reasons for initially
21 denying the request for inspection or copying.



1 (f) An entity shall permit the inspection and copying
2 under subsection (b) of any reasonably segregable portion of a
3 record after deletion of any portion that is exempt under
4 subsection (c).

5 (g) An entity shall comply with or deny, in accordance
6 with subsection (d), a request for inspection or copying of
7 protected health information under this section not later than
8 thirty days after the date on which the entity or its agent
9 receives the request.

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

13 (1) The protected health information is retained by the
14 agent; and

15 (2) The agent has received in writing a request from the
16 entity involved to fulfill the requirements of this
17 section, at which time this information shall be
18 provided to the individual. The agent shall comply
19 with subsection (g) with respect to any such
20 information.



1 (i) The entity shall afford at least one level of appeal
2 by parties not involved in the original decision to deny a
3 request for inspection and copying.

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

8 (k) If an entity denies an individual's request for
9 copying pursuant to subsection (c), or if an individual so
10 requests, the entity shall permit the inspection or copying of
11 the requested protected health information by the individual's
12 designated representative, upon presentation of a proper
13 authorization signed by the individual, unless it is patently
14 clear that doing so would defeat the purpose for which the
15 entity originally denied the individual's request for inspection
16 and copying.

17 **§ -12 Additions to protected health information.** A
18 health care provider is the owner of the medical records in the
19 health care provider's possession that were created by the
20 health care provider in treating a patient. An individual or
21 the individual's designated representative may request in
22 writing that a health care provider who generated a medical



1 record append additional information to the record in order to
2 improve the accuracy or completeness of the information;
3 provided that appending this additional information does not
4 erase or obliterate any of the original information. A health
5 care provider shall do one of the following:

- 6 (1) Append the information as requested; or
7 (2) Notify the individual that the request has been
8 denied, the reason for the denial, and that the
9 individual may file a statement of reasonable length
10 explaining the correctness or relevance of existing
11 information or the addition of new information. The
12 statement or copies shall be appended to the medical
13 record and shall at all times accompany that part of
14 the record in contention.

15 **§ -13 Notice of confidentiality practices; forms of**
16 **notices.** (a) For the purposes of this section only, "entity"
17 means a health care provider, health care data organization,
18 health plan, health oversight agency, public health authority,
19 employer, insurer, health researcher, or educational
20 institution.

21 (b) An entity shall prominently post or provide current
22 notice of the entity's confidentiality practices. The notice



1 shall be printed in clear type and composed in plain language.
2 This notice shall be given pursuant to the requirements of
3 section -22. For the purpose of informing each individual of
4 the importance of the notice and educating the individual about
5 the individual's rights under this chapter, the notice shall
6 contain the following language, placed prominently at the
7 beginning:

8 IMPORTANT: THIS NOTICE DEALS WITH THE SHARING OF
9 INFORMATION FROM YOUR MEDICAL RECORDS. PLEASE READ
10 IT CAREFULLY. This notice describes your
11 confidentiality rights as they relate to
12 information from your medical records and explains
13 the circumstances under which information from your
14 medical records may be shared with others. The
15 information in this notice also applies to others
16 covered under your health plan, such as your spouse
17 or children. If you do not understand the terms of
18 this notice, please ask for further explanation.

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



1 (1) A description of the individual's rights with respect
2 to protected health information that shall contain at
3 a minimum, the following:

4 (A) An individual's right to inspect and copy the
5 individual's own medical record;

6 (B) An individual's right to request that a health
7 care provider append information to the
8 individual's medical record; and

9 (C) An individual's right to receive this notice from
10 each health plan upon enrollment, annually, and
11 when confidentiality practices are substantially
12 amended;

13 (2) The uses and disclosures of protected health
14 information authorized under this chapter including
15 information about:

16 (A) Payment;

17 (B) Conducting quality assurance activities or
18 outcomes assessments;

19 (C) Reviewing the competence or qualifications of
20 health care providers;

21 (D) Performing accreditation, licensing, or
22 credentialing activities;



- 1 (E) Analyzing health plan claims or health care
- 2 records data;
- 3 (F) Evaluating health care providers' clinical
- 4 performance;
- 5 (G) Carrying out utilization management; or
- 6 (H) Conducting or arranging for auditing services in
- 7 accordance with statute, rule, or accreditation
- 8 requirements;
- 9 (3) The right of the individual to limit disclosure of
- 10 protected health information by deciding not to use
- 11 any health plan or other third party payment as
- 12 payment for the health care service, as set forth in
- 13 section -21(c);
- 14 (4) The procedures for giving consent to disclosures of
- 15 protected health information and for revoking the
- 16 consent;
- 17 (5) The description of procedures established by the
- 18 entity for the exercise of the individual's rights
- 19 required under this chapter; and
- 20 (6) The right to obtain a copy of the notice of
- 21 confidentiality practices required under this chapter.



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

4 **§ -14 Establishment of safeguards.** (a) An entity shall
5 establish and maintain administrative, technical, and physical
6 safeguards that are appropriate to the size and nature of the
7 entity establishing the safeguards, and that are appropriate to
8 protect the confidentiality, security, accuracy, and integrity
9 of protected health information created, received, obtained,
10 maintained, used, transmitted, or disposed of by the entity.

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

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

14 **§ -21 General rules regarding use and disclosure.** (a)
15 An entity shall not use or disclose protected health information
16 except as authorized under this part and under part IV.
17 Disclosure of health information in the form of nonidentifiable
18 health information shall not be construed as a disclosure of
19 protected health information.

20 (b) For the purpose of treatment or qualified health care
21 operations, an entity shall use or disclose protected health
22 information only if the use or disclosure is properly noticed



1 pursuant to sections -13 and -22. For all other uses and
2 disclosures, an entity shall use or disclose protected health
3 information only if the use or disclosure is properly consented
4 to pursuant to section -23. Disclosure to agents of an
5 entity shall be considered as a disclosure within an entity.

6 (c) If an individual does not want protected health
7 information used or disclosed pursuant to section (b), the
8 individual shall advise the health care provider prior to the
9 delivery of health care that the relevant protected health
10 information shall not be used or disclosed pursuant to
11 subsection (b), and the individual shall pay the health care
12 provider directly for the health care. A health plan may
13 decline to cover particular health care if an individual has
14 refused to allow the use or disclosure of protected health care
15 information pertaining to the particular health care. Protected
16 health information related to health care paid for directly by
17 the individual shall not be used or disclosed without consent.

18 (d) An agent who receives protected health information
19 from an entity shall be subject to all requirements under this
20 part.

21 (e) Every use or disclosure of protected health
22 information shall be limited to the purpose for which it was



1 collected. Any other use or disclosure without a valid
2 authorization to use or disclose shall be an unauthorized
3 disclosure.

4 (f) Nothing in this part permitting the use or disclosure
5 of protected health information shall be construed to require
6 use or disclosure.

7 (g) An entity may disclose protected health information to
8 an employee or agent of the entity not otherwise authorized to
9 receive such information for purposes of creating
10 nonidentifiable health information, if the entity prohibits the
11 employee or agent of the entity from using or disclosing the
12 protected health information for purposes other than the sole
13 purpose of creating nonidentifiable health information, as
14 specified by the entity.

15 (h) Any individual or entity that manipulates or uses
16 nonidentifiable health information to identify an individual
17 shall be deemed to have disclosed protected health information.
18 The disclosure or transmission of a unique patient identifier
19 shall be deemed to be a disclosure of protected health
20 information.

21 § -22 Giving notice regarding disclosure of protected
22 health information for treatment or qualified health care



1 **operations.** (a) The notice required by section -13 shall
2 be:

3 (1) Given by each health plan upon enrollment, annually,
4 and when confidentiality practices are substantially
5 amended, to each individual who is eligible to receive
6 health care under the health plan, or to the
7 individual's parent or guardian if the individual is a
8 minor or incompetent; and

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

11 (b) For each new enrollment or re-enrollment by an
12 individual in a health plan, on or after the effective date of
13 this chapter, a health plan shall make reasonable efforts to
14 obtain the individual's signature on the notice of
15 confidentiality practices required by section -13. The notice
16 to be signed shall state that the individual is signing on
17 behalf of the individual and all others covered by the
18 individual's health plan. If the health plan is unable to
19 obtain an individual's signature, the health plan shall note the
20 reason for the failure to obtain the signature. The lack of a
21 signed notice of confidentiality practices shall not justify a
22 denial of coverage of a claim, nor shall it limit a health



1 plan's access to information necessary for treatment and
2 qualified health care operations; provided that an individual
3 may elect to keep the medical records from being disclosed by
4 paying directly for the subject health care, as provided under
5 section -21(c).

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

11 (d) For the purposes of this section, "reasonable efforts"
12 may include requiring an individual's employer to present the
13 notice to the individual and to request a signature, or mailing
14 the notice to the individual with instructions to sign and
15 return the notice within a specified period of time.

16 **§ -23 Authorization to disclose protected health**
17 **information other than for treatment, payment, or qualified**
18 **health care operations.** (a) An entity may disclose protected
19 health information for purposes other than those noticed under
20 section -22, pursuant to a separate written authorization to
21 disclose executed by the individual who is the subject of the



1 protected health information. The authorization shall meet the
2 requirements of subsection (b).

3 (b) To be valid, an authorization shall be separate from
4 any other notice or authorization required by this part; shall
5 be in writing, dated, and signed or if in electronic form,
6 authenticated by the individual using a unique identifier; shall
7 not have been revoked; and shall:

8 (1) Identify the person or entity authorized to disclose
9 protected health information;

10 (2) Identify the individual who is the subject of the
11 protected health information;

12 (3) Describe the nature of and the time span of the
13 protected health information to be disclosed;

14 (4) Identify the person to whom the protected health
15 information is to be disclosed;

16 (5) Describe the purpose of the disclosure;

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

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



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

11 (d) A recipient of protected health information pursuant
12 to an authorization under this section may use the protected
13 health information solely to carry out the purpose for which the
14 protected health information was authorized for release.

15 (e) Each entity collecting or storing protected health
16 information shall maintain for seven years, as part of an
17 individual's protected health information, a record of each
18 authorization by the individual and any revocation of
19 authorization by the individual.

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

21 **§ -31 Coroner or medical examiner.** When a coroner,
22 medical examiner, or duly appointed deputy seeks protected



1 health information for the purpose of inquiry into, and
2 determination of the cause, manner, and circumstances of a
3 death, any person shall provide the requested protected health
4 information to the coroner, medical examiner, or duly appointed
5 deputy without undue delay. If a coroner, medical examiner, or
6 duly appointed deputy receives protected health information,
7 this protected health information shall remain protected health
8 information unless it is attached to or otherwise made a part of
9 a coroner's or medical examiner's official report. Health
10 information attached to or otherwise made a part of a coroner's
11 or medical examiner's official report shall be exempt from this
12 chapter.

13 **§ -32 Individual's designated representative, relative,**
14 **or surrogate; directory information.** (a) A health care
15 provider, or a person who receives protected health information
16 under subsection (b), may disclose protected health information
17 regarding an individual to an individual's designated
18 representative, relative, or surrogate if:

19 (1) The individual who is the subject of the protected
20 health information:



1 (A) Has been notified of the individual's right to
2 object to the disclosure and the individual has
3 not objected to the disclosure; or

4 (B) Is in a physical or mental condition such that
5 the individual is not capable of objecting, and
6 there are no prior indications that the
7 individual would object; and

8 (2) The protected health information is disclosed for the
9 purpose of providing health care to that individual;
10 or

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

13 (b) Except as provided in subsection (d), a health care
14 provider may disclose the information described in subsection
15 (c) to any other person if the individual who is the subject of
16 the information:

17 (1) Has been notified of the individual's right to object
18 to the disclosure and the individual has not objected
19 to the disclosure; or

20 (2) Is in a physical or mental condition such that the
21 individual is not capable of objecting; and



1 (A) The individual's designated representative,
2 relative, or surrogate has not objected; and

3 (B) There are no prior indications that the
4 individual would object.

5 (c) Information that may be disclosed pursuant to
6 subsection (b) is only that information that consists of any of
7 the following items:

8 (1) The name of the individual who is the subject of the
9 protected health information;

10 (2) The general health status of the individual described
11 as critical, poor, fair, stable, or satisfactory or in
12 terms denoting similar conditions; or

13 (3) The location of the individual on premises controlled
14 by a health care provider; provided that this
15 disclosure shall not be made if the information would
16 reveal specific information about the physical or
17 mental condition of the individual, unless the
18 individual expressly authorizes the disclosure.

19 (d) A disclosure shall not be made under this section if
20 the health care provider involved has reason to believe that the
21 disclosure could lead to physical or mental harm to the



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

3 **§ -33 Identification of deceased individuals.** A health
4 care provider may disclose protected health information if the
5 disclosure is necessary to assist in the identification or safe
6 handling of a deceased individual.

7 **§ -34 Emergency circumstances.** Any person who creates
8 or receives protected health information under this chapter may
9 use or disclose protected health information in emergency
10 circumstances when the use or disclosure is necessary to protect
11 the health or safety of the individual who is the subject of the
12 protected health information, from serious, imminent harm. A
13 use or disclosure made in the good faith belief that the use or
14 disclosure was necessary to protect the health or safety of an
15 individual from serious, imminent harm shall not be a violation
16 of this chapter.

17 **§ -35 Disclosures for health oversight.** (a) Any person
18 may disclose protected health information to a health oversight
19 agency for purposes of an oversight function authorized by law.

20 (b) For purposes of this section, the individual with
21 authority to authorize the health oversight function involved
22 shall provide to the person described in subsection (a) a



1 statement that the protected health information is being sought
2 for a legally authorized oversight function.

3 (c) Protected health information about an individual that
4 was obtained under this section may not be used in or disclosed
5 to any person for use in an administrative, civil, or criminal
6 action or investigation directed against the individual unless
7 the action or investigation arises out of and is directly
8 related to:

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

10 (2) An action involving a fraudulent claim related to
11 health; or

12 (3) An action involving oversight of a public health
13 authority or a health researcher.

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

18 **§ -36 Public health.** (a) Any person or entity may
19 disclose protected health information to a public health
20 authority or other person authorized by law, for use in a
21 legally authorized:

22 (1) Disease or injury report;



1 (2) Public health surveillance;

2 (3) Public health investigation or intervention; or

3 (4) Health or disease registry.

4 (b) The disclosure of protected health information,
5 pursuant to this section, to a public health authority or other
6 person authorized by law shall not be a violation of this
7 chapter.

8 (c) Protected health information disclosed for purposes of
9 this section remains protected health information and shall not
10 be further disclosed by the receiving authority or person,
11 except as permitted under this section.

12 **§ -37 Health research.** (a) A health care provider,
13 health plan, public health authority, employer, insurer, or
14 educational institution may disclose protected health
15 information to a health researcher if the following requirements
16 are met:

17 (1) The research shall have been approved by an
18 institutional review board. In evaluating a research
19 proposal, an institutional review board shall require
20 that the proposal demonstrate a clear purpose,
21 scientific integrity, and a realistic plan for
22 maintaining the confidentiality of protected health



1 information. Research not otherwise subjected by
2 federal regulation to institutional review board
3 review shall be subject only to the review
4 requirements of this paragraph;

5 (2) The health care provider, health plan, public health
6 authority, employer, insurer, or educational
7 institution shall only disclose protected health
8 information that it has previously created or
9 collected; and

10 (3) The holder of protected health information shall keep
11 a record of all health researchers to whom protected
12 health information has been made available.

13 (b) A health researcher who receives protected health
14 information shall remove and destroy, at the earliest
15 opportunity consistent with the purposes of the project
16 involved, any information that would enable an individual to be
17 identified.

18 (c) A health researcher who receives protected health
19 information shall not disclose or use the protected health
20 information or unique patient identifiers for any purposes not
21 reviewed by an institutional review board under this part or for
22 any purposes other than the health research project for which



1 the protected health information was obtained, except that the
2 health researcher may disclose the information pursuant to
3 section -35(a).

4 **§ -38 Disclosure in civil, judicial, and administrative**
5 **procedures.** (a) Protected health information may be disclosed
6 pursuant to a discovery request or subpoena in a civil action
7 brought in a state court or a request or subpoena related to a
8 state administrative proceeding, only if the disclosure is made
9 pursuant to a court order as provided for in subsection (b) or
10 to a written authorization under section -23.

- 11 (b) A court order issued under this section shall:
- 12 (1) Provide that the protected health information involved
 - 13 is subject to court protection;
 - 14 (2) Specify to whom the protected health information may
 - 15 be disclosed;
 - 16 (3) Specify that the protected health information may not
 - 17 otherwise be disclosed or used; and
 - 18 (4) Meet any other requirements that the court determines
 - 19 are needed to protect the confidentiality of the
 - 20 protected health information.



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

- 4 (1) Nonidentifiable health information; or
- 5 (2) Related to a party to the litigation whose medical
6 condition is at issue.

7 (d) The release of any protected health information under
8 this section shall not violate this chapter.

9 **§ -39 Disclosure for civil or administrative law**

10 **enforcement purposes.** (a) For the purposes of this section
11 only, "entity" means a health care provider, health plan, health
12 oversight agency, employer, insurer, or educational institution.

13 (b) Except as to disclosures to a health oversight agency,
14 which are governed by section -35, an entity or person who
15 receives protected health information pursuant to sections
16 -23 and -31 through -37, may disclose protected health
17 information under this section, if the disclosure is pursuant
18 to:

- 19 (1) An administrative subpoena or summons or judicial
20 subpoena;
- 21 (2) Consent in accordance with section -23; or
- 22 (3) A court order.



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

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

14 (e) To the extent practicable, and consistent with the
15 requirements of due process, a civil or administrative law
16 enforcement agency shall redact personally identifying
17 information from protected health information prior to the
18 public disclosure of the protected health information in a
19 judicial or administrative proceeding.

20 (f) Protected health information obtained by a civil or
21 administrative law enforcement agency pursuant to this section



1 shall only be used for purposes of a legitimate law enforcement
2 activity.

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

8 **§ -40 Payment card and electronic payment transaction.**

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

18 (b) A person who is a debit, credit, or other payment card
19 or account number issuer, or is otherwise directly involved in
20 the processing of payment transactions involving such cards,
21 account numbers, or other electronic payment transactions, or is
22 otherwise directly involved in the billing or collection of



1 amounts paid through these means, may use or disclose protected
2 health information about an individual that has been disclosed
3 in accordance with subsection (a) only when necessary for:

4 (1) The settlement, billing, or collection of amounts
5 charged to, debited from, or otherwise paid by the
6 individual using a debit, credit, or other payment
7 card or account number, or by other electronic payment
8 means;

9 (2) The transfer of receivables, accounts, or interest
10 therein;

11 (3) The internal audit of the debit, credit, other payment
12 card, or account number account information;

13 (4) Compliance with federal, state, or county law; or

14 (5) Compliance with a properly authorized civil, criminal,
15 or regulatory investigation by federal, state, or
16 county authorities as governed by the requirements of
17 this section.

18 **§ -41 Standards for electronic disclosures.** The office
19 of information practices shall adopt rules in accordance with
20 chapter 91 to establish standards for disclosing, authorizing,
21 and authenticating, protected health information in electronic
22 form consistent with this part.



1 **§ -42 Rights of minors.** (a) In the case of an
2 individual who is eighteen years of age or older, all rights of
3 an individual under this chapter shall be exercised by the
4 individual.

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

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

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

15 (2) At least fourteen but under eighteen years of age, the
16 rights of inspection and amendment, and the right to
17 authorize use and disclosure of protected health
18 information of the individual may be exercised by the
19 individual, or by the parent or legal guardian of the
20 individual. If the individual and the parent or legal
21 guardian do not agree as to whether to authorize the
22 use or disclosure of protected health information of



1 the individual, the individual's authorization or
2 revocation of authorization shall control.

3 § -43 Deceased individuals. This chapter shall continue
4 to apply to protected health information concerning a deceased
5 individual following the death of that individual. A person who
6 is authorized by law or by an instrument recognized under law,
7 to act as a personal representative of the estate of a deceased
8 individual, or otherwise to exercise the rights of the deceased
9 individual, to the extent so authorized, may exercise and
10 discharge the rights of the deceased individual under this
11 chapter.

12 PART V. SANCTIONS

13 § -51 Wrongful disclosure of protected health
14 information. (a) A person who knowingly or intentionally
15 obtains protected health information relating to an individual
16 or discloses protected health information to another person in
17 violation of this chapter shall be guilty of a class C felony.

18 (b) A person who knowingly or intentionally sells,
19 transfers, or uses protected health information for commercial
20 advantage, personal gain, or malicious harm, in violation of
21 this chapter shall be guilty of a class B felony.



1 **§ -52 Civil actions by individuals.** (a) Any individual
2 whose rights under this chapter have been violated may bring a
3 civil action against the person or entity responsible for the
4 violation.

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

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

11 (2) Equitable relief;

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

17 (4) Punitive damages, as appropriate;

18 (5) Costs of the action;

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

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

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



1 **§ -53 Cease and desist orders; civil penalty.** (a) A
2 court shall issue and cause to be served upon a person, who has
3 violated any provision of this chapter, a copy of the court's
4 findings and an order requiring the person to cease and desist
5 from violating this chapter, or to otherwise comply with the
6 requirements of this chapter. The court may also order any one
7 or more of the following:

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

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

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

19 (b) Any person who violates a cease and desist order or
20 injunction issued under this section may be subject to a civil
21 penalty of not more than \$10,000 for each and every act in
22 violation of the cease and desist order or injunction.



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

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

7 **§ -54 Prevention and deterrence.** To promote the
 8 prevention and deterrence of acts or omissions that violate laws
 9 designed to safeguard protected health information in a manner
 10 consistent with this chapter, the director of the office of
 11 information practices, with any other appropriate individual,
 12 organization, or agency, may provide advice, training, technical
 13 assistance, and guidance regarding ways to prevent improper
 14 disclosure of protected health information.

15 **§ -55 Relationship to other laws.** (a) Nothing in this
 16 chapter shall be construed to preempt or modify any provisions
 17 of state law concerning a privilege of a witness or person in a
 18 court of the State. Receipt of notice pursuant to section -22
 19 or authorization to disclose pursuant to section -23 shall
 20 not be construed as a waiver of these privileges.

21 (b) Nothing in this chapter shall be construed to preempt,
 22 supersede, or modify the operation of any state law that:



- 1 (1) Provides for the reporting of vital statistics such as
2 birth or death information;
- 3 (2) Requires the reporting of abuse or neglect information
4 about any individual;
- 5 (3) Relates to public or mental health and that prevents
6 or otherwise restricts disclosure of information
7 otherwise permissible under this chapter, except that
8 if this chapter is more protective of information, it
9 shall prevail;
- 10 (4) Governs a minor's right to access protected health
11 information or health care; or
- 12 (5) Meets any other requirements that the court determines
13 are needed to protect the confidentiality of the
14 information."

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



1 SECTION 3. This Act does not affect rights and duties that
2 matured, penalties that were incurred, and proceedings that were
3 begun before its effective date.

4 SECTION 4. This Act shall take effect on July 1, 2014.

5

INTRODUCED BY: Debra A. Belli

Sen. Belli

Debra A. Belli

Sen. Belli

Debra A. Belli

JAN 23 2014



H.B. NO. 2532

Report Title:

Health Care Information Privacy

Description:

Specifies conditions under which individual health care information can be used or disclosed. Provides penalties.

Effective July 1, 2014.

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

