Appendix B: Model Codes for Protection of Health Care Information

CHAPTER 1751. INSURANCE INFORMATION AND PRIVACY PROTECTION

Chapter 1751 of the General Laws was added by St.1991, c. 516, 1.

1. Application of chapter

(a) The obligations imposed by this chapter shall apply to an insurance institution, insurance representative or insurance-support organization which in the case of life, health and disability insurance:

(1) collects, receives or maintains information in connection with an insurance transaction which pertains to a natural person who is a resident of the commonwealth; or

(2) engages in an insurance transaction with an applicant, individual or policyholder who is a resident of the commonwealth.

(b) In the case of life, health or disability insurance, the rights granted by this chapter shall extend to the following residents of the commonwealth:

(1) natural persons who are the subject of information collected, received or maintained in connection with insurance transactions; and

(2) applicants, individuals or policyholders who engage in or seek to engage in insurance transactions.

(c) For purposes of this section, a person shall be considered a resident of the commonwealth if such person's last known mailing address, as shown in the records of the insurance institution, insurance representative or insurance-support organization, is located in the commonwealth.

Added by St.1991, c. 516, 1.

Historical and Statutory Notes

1991 Legislation

St.l991, c. 516, $ 1, adding this chapter, consisting of this section and $$ 2 to 22, was approved Jan, 7, 1992, and by $ 3 made effective July 1, 1992.

Section 4 of St.1991, c. 516, provides:

"The provisions and scope of this act shall not extend to property casualty insurers or property casualty insurance representatives. "

$ 2. Definitions

As used in this chapter the following words shall, unless the context otherwise requires have the following meanings:

"Adverse underwriting decision", (1) any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:

(i) a declination of insurance coverage;

(ii) a termination of insurance coverage;

(iii) failure of an insurance representative to apply for insurance coverage with a specific insurance institution which the insurance representative represents and which is requested by an applicant; or

(iv) in the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.

(2) Notwithstanding the provisions of clause (l), the following actions shall not be considered adverse underwriting decisions but the insurance institution *or* insurance representative responsible for their occurrence shall nevertheless provide the applicant or policyholder- with the specific reason or reasons for their occurrence:

(i) the termination of an indidiual policy form on a class or statewide basis;

(ii) a declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or

(iii) the rescission of a policy.

"Affiliate" or "affiliated", a person who directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.

"Applicant", any person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.

"Commissioner", the commissioner of insurance or his designee.

"Consumer report", a written, oral or other communication of information bearing on a natural person's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.

"Consumer reporting agency" any person who:

(1) regularly engages, in whole *or* in part, in the practice of assembling or preparing consumer reports for a monetary fee;

(2) obtains information primarily from sources other than insurance institutions; and

(3) furnishes consumer reports to other persons.

''Control, including the terms ''controlled by' or "under common control with", the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise unless the power is the result of an official position with or corporate office held held by the person

''Declination of insurance coverage'', a denial, in whole or in part, by an insurance institution or insurance representative of requested insurance coverage.

''Individual'', any natural person who:

(1) in the case of life, health or disability insurance, is a past present or proposed principal insured or certificate holder;

(2) is apast present or proposed policy owner;

(3) is pastor present applicantion

(4) is a past or present claimant or

(5) derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this chapter.

"Institutional source", any person or governmental entity that provides information about an individual to an insurance representative, insurance institution or insurance-support organization, other than:

(1) an insurance representative;

(2) the individual who is the subjectof the information; or

(3) a natural person acting in a personal capacity rather than in a business or professional capacity.

"Insurance institution", any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical service plans and hospital service plans, preferred provider arrangements and Savings Bank Life Insurance as defined in chapters one hundred and seventy-five, one hundred and seventy-six, one hundred and seventy-six A, one hundred and seventy-six B, one hundred and seventy-six C, one hundred and seventy-six G,one hundred and seventy-six I, one hundred and seventy-eight and one hundred and seventy-eight A, "Insurance institution" shall not include insurance representatives or insurance-support organizations.

"Insurance-support organization":

(1) any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or insurance representative for insurance transactions, including:

(i) the furnishing of consumer reports or investigative consumer reports to an insurance institution or insurance representative for use in connection with an insurance transaction; or

(ii) the collection of personal information from insurance institutions, insurance representatives or other insurance-support organizations for the purpose of detecting or preventing fraud or material misrepresentation in connection with insurance underwriting or insurance claim activity.

(2) Notwithstanding the provisions of subparagraph (l), the following persons shall not be considered "insurance-support organizations" for purposes of this chapter: insurance representatives, government institutions, insurance institutions, medical care institutions and medical professionals.

"Insurance representative", an agent, broker, advisor, adjuster or other person engaged in activities described in sections one hundred and sixty-two to one hundred and seventy-seven D, inclusive, of chapter one hundred and seventy-five.

"Insurance transaction", any transaction involving life, health or disability insurance which entails:

(1) the determination of an individual's eligibility for an insurance coverage, benefit or payment; or

(2) the servicing of an insurance application, policy, contract or certificate.

"Investigative consumer report", a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information, provided; however, that it shall be unlawful for any such report to

contain any information designed to determine the sexual orientation of an applicant, proposed insured, policyholder, beneficiary or any other person, or for such persons, information relating to counseling for Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related Complex (ARC) as defined by the Centers for Disease Control of the United States Public Health Service. For purposes of this subsection, "counseling" shall not mean diagnosis of or treatment for AIDS or ARC.

"Medical-care institution", any facility or institution that is licensed to provide health care services to natural persons, including but not limited health-maintenance organizations, home-health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.

"Medical professional", any person licensed or certified to provide health care services to natural persons, including, but not limited to, a chiropractor, clinical dietician, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.

"Medical-record information", personal information which:

(1) relates to an individual's physical or mental condition, medical history or medical treatment; and

(2) is obtained from a medical professional or medical-care institution, from the individual, or from such individual's spouse, parent or legal guardian;

Medical-record information shall not include information relating to counseling for Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related Complex (ARC) as defined by the Centers for Disease Control of the United States Public Health Service. For purposes of this definition, "counseling" shall not mean diagnosis of or treatment for AIDS or ARC.

"Person", any natural person, corporation, association, partnership or other legal entity.

"Personal information", any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. "Personal information" shall include an individual's name and address and "medical-record information" but shall not include "privileged information".

"Policyholder", any person who:

(1) in the case of individual life, health or disability insurance, is a present policyholder; or

(2) in the case of group life, health or disability insurance which is individually underwritten, is a present group certificate holder.

"Pretext interview", an interview by a person who attempts to obtain information about a natural person and who commit-s one *or* more of the following acts:

(1) pretends to be someone he is not;

(2) pretends to represent a person he is not in fact representing;

(3) misrepresents the true purpose of the interview; or

(4) refuses to identify himself upon request.

"Privileged information", any individully identifiable information that:

(1) relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and

(2) is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an indvidual; provided, however, that information otherwise meeting the requirements of this definition shall nevertheless be considered "personal information" under this chapter if it is disclosed in violation of section thirteen.

"Termination of insurance coverage" or "termination of an insurance policy", either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

"Unauthorized insurer", an insurer not lawfully admitted to issue policies of insurance or an annuity or pure endowment contract, except as provided in section one hundred and sixty of chapter one hundred and seventy-five.

Added by St.1991, c. 516, 1.

3. Pretext interviews; use

No insurance institution, insurance representative, or insurance-support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, that a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim where, based upon specific information available for review by the commissioner, there is a reasonable basis for suspecting criminal activity, fraud or material misrepresentation in connection with the claim.

Added by St.1991, c. 516, ~ 1.

$ 4. Notice of information practices; time; contents; abbreviated notice

(a) An insurance institution or insurance representative shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as follows:

(1) in the case of an application for insurance, a notice shall be provided no later than at the time the application for insurance is made;

(2) in the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:

(i) personal information is collected only from the policyholder or from public records; or

(ii) a notice meeting the requirements of this section has been given within the previous twenty-four months;

(3) in the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder or from public records.

(b) A notice required by subsection (a) shall be in writing and shall state:

(1) whether personal information ***may*** be collected from persons other than the individual proposed for coverage;

(2) the type of personal information that may be collected and the type of source and investigative technique that may be used to collect such information;

(3) the type of disclosure permitted by this chapter and the circumstances under which such disclosure may be made without prior authorization; provided, however, that only such circumstances need be described which occur with such frequency as to indicate a general business practice;

(4) a description of the rights established under sections eight, nine and ten and the manner in which such rights may be exercised; and

(5) that information obtained from a report prepared by an insurance-support organization may be retained by the insurance-support organization and disclosed to other persons.

(c) In lieu of the notice prescribed in subsection (b), the insurance institution or insurance representative may provide an abbreviated notice informing the applicant or policyholder that:

(1) personal information may be collected from a person other than the individual proposed for coverage;

(2) such information as well as other personal or privileged information subsequently collected by the insurance institution or insurance representative may in certain circumstances be disclosed to a third party without authorization;

(3) a right of access and correction exists with respect to all personal information collected; and

(4) the notice prescribed in subsection (b) shall be furnished to the applicant or policyholder upon request.

(d) The obligations imposed by this section upon an insurance institution or insurance representative may be satisfied by another insurance institution or insurance representative authorized to act on its behalf.

(e) Information collection and disclosure authorized pursuant to this chapter is limited to the practices described in the notice issued or available pursuant to this section.

Added by St.1991, c. 516, $ 1.

$ 5. Questions to obtain marketing or research information; disclosure

An insurance institution or insurance representative shall clearly specify questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

Added by St.1991, c. 516,$ 1.

$ 6. Disclosure authorization form; **contents**

Notwithstanding any general or special law to the contrary, no insurance institution, insurance representative or insurance-support organization may utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, insurance representative *or* insurance-support organization unless the form or statement:

(1) is written in plain language;

(2) is dated;

(3) specifies the types of persons authorized to disclose information about the individual;

(4) specifies the nature of the information authorized to be disclosed;

(5) names the insurance institution or insurance representative and identifies by generic reference the representative of the insurance institution to whom the individual is authorizing information to be disclosed;

(6) specifies the purposes for which the information is collected;

(7) specifies the length of time such authorization shall remain valid, which shall be no longer than:

(A) in the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy a policy reinstatement or a request for change in policy benefits, thirty months from the date the authorization is signed; or

(B) in the case of authorizations signed for the purpose of (’collecting information in connection with a claim for benefits under an insurance policy:

(i) the term of coverage of the policy’ if the claim is for a health insurance benefit; or

(ii) the duration of the claim if the claim is not for a health insuranc(> benefit; and

(8) advises the individual or a person authorized to act on behalf of such individual that such individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

Added by St.1991, c. 516, $ 1.

7. Investigative consumer report; personal interview; prohibited information

(a) No insurance institution, insurance representative or insurance-support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or insurance representative informs the individual:

(1) that each individual may request to be intro-viewed in connection with the preparation of the investigative consumer report; and

(2) that upon a request pursuant to section eight, such individual is entitled to receive a copy of the investigative consumer report.

(b) If an investigative consumer report is to be prepared by an insurance institution or insurance representative, such insurance institution or insurance representative shall institute reasonable procedures to conduct a personal interview requested by an individual.

(c) If an investigative consumer report is to be prepared by an insurance-support organization, the insurance institution or insurance representative desiring such report shall inform the insurance-support organization whether a personal interview has been requested by the individual. The insurance-support organization shall institute reasonable procedures to conduct such **reviews,** if requested.

(d) No investigative consumer report shall contain any information designed to determine the sexual orientation of an applicant, proposed insured, policyholder, beneficiary or any other person, or for such persons, information relating to counseling for Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related Complex (ARC) as defined by the Centers for Disease Control of the United States Public Health Service. For purposes of this subsection, "counseling" shall not mean diagnosis of or treatment for AIDS or ARC,

Added by St.1991, c. 516, $ 1.

8. Recorded personal information; medical record information; disclosure; fees

(a) An insurance institution, insurance representative or insurance-support organization shall make any personal information collected or maintained in connection with an insurance transaction in its possession or control available to the individual to whom it refers, or to the authorized representative of such individual, as provided in this section.

(b) If any individual, after identification, submits a written request to an insurance institution, insurance representative or insurance-support organization for access to recorded personal information about such individual which is reasonably described by such individual and reasonably locatable and retrievable by the insurance institution, insurance representative or insurance-support organization, the insurance institution, insurance representative or insurance-support organization shall within thirty business days from the date such request is received:

(1) either provide such individual with a copy of such recorded personal information or inform such individual of the nature and substance of such recorded personal information in writing;

(2) permit such individual to see and copy, in person, such recorded personal information or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;

(3) disclose to such individual the identity, if recorded, of any person to whom the insurance institution, insurance representative or insurance-support organization has disclosed such personal information within two years prior to such request, and if such identity is not recorded, the names of insurance institutions, insurance representatives, insurance-support organizations or other persons to whom such information is normally disclosed; and

(4) provide such individual with a summary of the procedures by which such individual may request correction, amendment or deletion of recorded personal information.

(c) Any personal information provided pursuant to subsection (b) shall contain the name or identify the source, except that a source that is a natural person acting in a personal capacity need not be revealed if such confidentiality was specifically promised.

(d) Medical record information supplied by a medical care institution or medical professional and requested under subsection (b), together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical professional designated by such individual and licensed to provide medical care with respect to the condition to which the information relates, whichever such individual prefers. Mental health record information shall be supplied directly to such individual, pursuant to this section, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates or another equally qualified mental health professional. Upon release of any medical or mental health record information to a medical professional designated by such individual, the insurance institution, insurance representative or insurance-support organization shall notify such individual, at the time of the disclosure, that it has provided the information to the medical professional.

(e) Except for personal information provided under section ten, an insurance institution, insurance representative or insurance-support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to an individual but no other fee may be charged.

(f) The obligations imposed by this section upon an insurance institution or insurance representative may be satisfied by another insurance institution or insurance representative authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under subsection (b), an insurance institution, insurance representative or insurance-support organization may make arrangements with an insurance-support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf so long as the insurance-support organization or consumer reporting agency has established and maintains procedures for maintenance of records to assure confidentiality.

(g) The rights granted to an individual in this section shall extend to a natural person to the extent information about such person is collected and maintained by an insurance institution, insurance representative or insurance-support organization in connection with an insurance transaction. The rights granted to a natural person by this subsection shall not extend to information about such person that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving such person.

(h) For the purpose of this section, the term "insurance support organization" shall not include "consumer reporting agency".

Added by St.1991, c. 516, $ 1

Historical and Statutory Notes

1991Legislation

Section 2 of St.1991, c. 516, as amended by St. 1992, c. 286, $ 2'76, provides:

"Chapter 516 of the acts of 1991 is hereby amended by striking out section 2 and inserting in place thereof the following section:—

"Section 2. The provisions of sections eight, nine and thirteen of chapter one hundred and seventy-five I of the General Laws, inserted by section one of this act, shall apply to rights granted therein regardless of the date of collection *or* receipt of the information which is the subject of such sections. "

St.1992, c. 2$6, I$ 276, **an** emergency act was approved Dec. 23, 1992.

$ 9. Correction, amendment or deletion of personal information

(a) An individual to whom personal information refers has a right **to** have any factual error corrected and any misrepresentation or misleading entry amended or deleted as provided in this section.

(b) Within thirty business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about such individual within its possession, an insurance institution, insurance representative or insurance-support organization shall either:

(1) correct, amend or delete the portion of the recorded personal information in dispute; or

(2) reinvestigate the disputed information and upon completion of such reinvestigation the insurance institution, insurance representative or insurance-support organization shall correct, amend or delete the portion of the recorded personal information in dispute or notify the individual of:

(i) its refusal to make such correction, amendment or deletion;

(ii) the reason for such refusal;

(iii) the individual's right to file a statement as provided in subsection (d); and

(iv) the individual's right to request review by the commissioner of insurance as provided by section fourteen.

(c) If the insurance institution, insurance representative or insurance-support organization corrects, amends or deletes recorded personal information in accordance with paragraph (1) of subsection (b), the insurance institution, insurance representative or insurance-support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:

(1) any person who, according to the records of the insurance institution, insurance representative or insurance-support organization, has, within the preceding two years received such recorded personal information from the insurance institution, insurance representative or insurance-support organization, and any person specifically designated by the individual who may have, within the preceding two years, received such recorded personal information; provided, however, that this subsection shall apply only to personal information which is medical record information or which relates to the individual's character, general reputation, personal characteristics or mode of living;

(2) any insurance-support organization whose primary source of personal information is insurance institutions if the insurance-support organization has systematically received such recorded personal information from the insurance institution within the preceding seven years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance-support organization no longer maintains recorded personal information about the individual; and

(3) any insurance-support organization that furnished the personal information that has been corrected, amended or deleted.

(d) Whenever an individual disagrees with an insurance institution's, insurance representative's or insurance-support organization's refusal to correct, amend or delete recorded persona! information, such individual shall be permitted to file with the insurance institution, insurance representative or insurance-support organization:

(1) a concise statement setting forth what such individual thinks is the correct, relevant or fair information; and

(2) a concise statement of the reasons why such individual disagrees with the insurance institution's, insurance representative's or insurance-support organization's refusal to correct, amend or delete recorded personal information.

(e) In the event an individual files a statment as described in subsection (d), the insurance institution, insurance representative or insurance-support organization shall:

(1) file the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it;

(2) in any subsequent disclosure by the insurance institution, insurance representative or insurance-support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter in dispute and provide the individual's statement along with the recorded personal information being disclosed; and

(3) furnish the statement to the persons and in the manner specified in subsection (c).

(f) The rights granted to an individual in this section shall extend to a natural person to the extent information about such person is collected and maintained by an insurance institution, insurance representative or insurance-support organization in connection with an insurance transaction. The right-s granted to a natural person by this subsection shall not extend to information about such person that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving such person.

(g) For purposes of this section, the term "insurance-support organization" shall not include "consumer reporting agency".

Added by St.1991, c 516, 1

Historical and **Statutory Notes**

1991 Legislation

Section 2, of **St.1991, c. 516,** as amended by St.1992, c. 286, $ 276, provides:

"Chapter 516 of the acts of 1991 is hereby amended by striking out section 2 and inserting in place thereof the following section:—

"Section 2. The provisions of sections eight, nine and thirteen of chapter one hundred and seventy-five I of the General Laws, inserted by section one of this act, shall apply to rights granted therein regardless of the date of collection or receipt of the information which is the subject of such sections. "

St.1992, c. 286, $ 276, an emergency act, was approved Dec. 23, 1992.

$ 10. **Adverse underwriting decision;** notice; reasons; disclosure of medical or mental health record information; summary of rights

(a) In the event of an adverse underwriting decision, the insurance institution or insurance representative responsible for the decision shall:

(1) either provide the applicant, policyholder or individual proposed for coverage with the specific reason for the adverse underwriting decision in writing or advise such person that upon written request such person may receive the specific reason in writing; and

(2) provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under subsection (b) and sections eight and nine.

(b) Upon receipt of a written request within ninety business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policy. holder or individual proposed for coverage, the insurance institution or insurance representative shall furnish to such person within twenty-one business days from the date of receipt of such written request:

(1) the specific reason for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to paragraph (1) of subsection (a); and

(2) the specific items of personal and privileged information that support such reason; provided, however, that:

(i) the insurance institution or insurance representative shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the commissioner, that the applicant, policy-

holder or individual proposed for coverage has engaged in criminal activity, fraud, or material misrepresentation; and

(ii) specific items of medical record information supplied by a medical care institutionor medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by such individual and licensed to provide medical care with respect to the condition to which the information relates, whichever such individual prefers. Mental health record information shall be supplied directly to such individual, pursuant to this subsection, only with the approval of the qualified professional person with treatment responsibility for the condition to which the information relates or of another equally qualified mental health professional. Upon release of any medical or mental health record information to a medical professional designated by such individual, the insurance institution, insurance representative or insurance-support organization shall notify such individual, at the time of the disclosure, that it has provided the information to the medical professional; and

(3) the name and address of the source that supplied the specific items of information pursuant to paragraph (2) of subsection (b); except that a source that is a natural person acting in a personal capacity need not be revealed if confidentiality was specifically promised; provided, however, that the identity of any medical professional or medical-care institution shall be disclosed either directly to the individual or to the designated medical professional other than the one who initially supplied the information, whichever such individual prefers.

(c) The obligations imposed by this section upon an insurance institution or insurance representative may be satisfied by another insurance institution or insurance representative authorized to act on its behalf.

(d) When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by subsection (a) may be given orally.

Added by St.1991, c. 516, $ 1.

$ 11. Prior adverse underwriting decisions; requests for information by insurance organizations

No insurance institution, insurance representative or insurance-support organization may seek information in connection with an insurance transaction concerning any previous adverse underwriting decision experienced by an individual unless such inquiry also requests the reasons for any previous adverse underwriting decision.

Added by St.1991, c. 516, $ 1.

$ 12. Adverse underwriting decision; basis

No insurance institution or insurance representative may base an adverse underwriting decision in whole or in part:

(1) on the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, that an insurance institution or insurance representative may base an adverse underwriting decision on further information obtained from an insurance institution or insurance representative responsible for a previous adverse underwriting decision;

(2) on personal information received from an insurance-support organization whose primary source of information is insurance institutions; provided, howe~'er, that an insurance institution or insurance representative may- base an adverse underwriting decision on further personal information obtained as the result of information received from such insurance-support organization; or

(3) on the basis of sexual orientation; provided, however, that neither the national origin, marital status, lifestyle or living arrangements, occupation, gender, medical history, beneficiary designation, nor zip code or other territorial classification of the

applicant may be used to establish, or aid in establishing, the applicant's sexual orientation.

Added by St.1991, c. 516, $ 1.

13. Personal or privileged information from insurance transactions; disclosure

An insurance institution, insurance representative or insurance-support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

(1) with the written authorization of the individual, provided that:

(i) if such authorization is submitted ***by another*** insurance institution, insurance representative or insurance-support organization, the authorization meets the requirement of section six; or

(ii) if such authorization is submitted by a person other than an insurance institution, insurance representative or insurance-support organization, the authorization is:

(A) dated;

(B) signed by the individual; and

(C) obtained one year or less prior to the date a disclosure is sought pursuant to this subsection; or

(2) to a person other than an insurance institution, insurance representative or insurance-support organization; provided, however, that such disclosure is reasonably necessary:

(i) to enable such person to perform a specific business, professional or insurance function for the disclosing insurance institution, insurance representative or insurance-support organization and such person agrees not to disclose the information further without such individual's written authorization unless the further disclosure:

(A) would otherwise be permitted by this section if made by an insurance institution, insurance representative or insurance-support organization; or

(B) is reasonably necessary for such person to perform its specific business, professional or insurance function for the disclosing insurance institution, insurance representative or insurance-support organization; or

(ii) to enable such person to provide information to the disclosing insurance institution, insurance representative or insurance-support organization for the purpose of:

(A) determining an individual's eligibility for an insurance benefit or payment; or

(B) detecting or preventing criminal activity, fraud or material misrepresentation in connection with an insurance transaction; or

(3) to an insurance institution, insurance representative, or insurance-support organization; provided, however, that the information disclosed is limited to that which is reasonably necessary:

(i) to detect or prevent criminal activity, fraud or material misrepresentation in connection with insurance transactions; or

(ii) for the receiving or disclosing insurance institution, insurance representative or insurance-support organization to perform its function in connection with an insurance transaction involving an individual; provided, however, that the recipient of the information is prohibited from redisclosing the information without explicit written authorization according to the requirements of paragraph (1) or that the individual is notified, either concurrently with the application or otherwise prior to disclosure of the information, that the disclosure of the information may be made and can find if the disclosure has been made; or

(4) to a medical-care institution or medical professional for the purpose of:

(i) verifying insurance coverage or benefits; or

(ii) informing an individual of a medical problem of which the individual may not be aware; or

(iii) conducting an operations or services audit to verify the individuals treated by the medical professional or at the medical-care institution, provided only. such information is disclosed as is reasonably necessary to accomplish the foregoing purposes; or

(5) to an insurance regulatory authority; or

(6) to a law enforcement or other governmental authority:

(i) to protect the interests of the insurance institution, insurance representative or insurance-support organization in preventing or prosecuting the perpetration of fraud upon it; or

(ii) if the insurance institution, insurance representative or insurance-support organization reasonably believes that illegal activities have been conducted by the individual; or

(7) otherwise permitted or required by law; or

(8) in response to a facially valid administrative or judicial order, including a search warrant or subpoena; or

(9) made for the purpose of conducting actuarial or research studies, provided that:

(i) no individual may be identified in any actuarial or research report;

(ii) information allowing the individual to be identified is removed to the extent practicable and where such removal is not practicable, is returned or destroyed as soon as it is no longer needed; and

(iii) the actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance representative or insurance-support organization and the disclosure is made in connection with such actuarial or research studies; or

(10) to a party or representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance of the insurance institution, insurance representative or insurance-support organization, provided that:

(i) prior to the consummation of the sale, transfer, merger or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation; and

(ii) the recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, insurance representative or insurance-support organization and the disclosure is made in connection with such sale, transfer, merger or consolidation; or

(11) to a person whose only use of such information will be in connection with the marketing of a product or service, provided that:

(1) no medical-record information, privileged information, or personal information relating to an individual's health, character, personal habits, mode of living or general reputation is disclosed, and no classification derived from such information is disclosed;

(2) the individual has been given an opportunity to indicate that he does not want personal information disclosed for marketing purposes and has given no indication that he does not want the information disclosed; and

(3) the person receiveing such information agrees not to use it except in connection with the marketing of a product or service or

(12) to an affiliate whose only use of the information will be in connection with an audit of the insurance institution or insurance representative or the marketing of an insurance product or service; provided, however, that the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons; or

(13) **by** a consumer reporting agency; provided, however, that the disclosure is to a person other than an insurance institution or insurance representative: or

(14) to a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or insurance representative's operations or services; provided, however, that the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit; or

(15) to a professional peer review organization for the purpose of reviewing the service or conduct of a medical-care institution or medical professional; or

(16) to a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable; or

(17) to a certificate holder or policyholder for the purpose of providing information regarding the status of an insurance transaction; or

(18) to a lienholder, mortgagee, assignee, lessor or other person shown on the records of an insurance institution or insurance representative as having a legal or beneficial interest in a policy of insurance; provided, however, that:

(i) no medical-record information is disclosed unless the disclosure would otherwise be permitted by this section; and

(ii) the information disclosed is limited to that which is reasonably necessary to permit such person to protect its interests in such policy.

Added by St.1991, c. 516, 9 1

Historical and Statutory Notes

1991 Legislation

Section 2 of St.1991, c. 516, as amended by' St.1992, c. 286, $ 276, provides:

"Chapter 516 of the acts of 1991 is hereby amended by striking out section 2 and inserting in place thereof the following section:—

"Section 2. The provisions of sections eight, nine and thirteen of chapter one hundred and seventy-five I of the General Laws, inserted by section one of this act, shall apply to rights granted therein regardless of the date of collection or receipt of the information which is the subject of such sections. '

St.1992 c. 286, $ 276, an emergency act, was approved Dec. 23, 1992.

14. Investigations

(a) The commissioner shall have power to examine and investigate into the affairs of every insurance institution or insurance representative doing business in the commonwealth to determine whether such insurance institution or insurance representative has been or is engaged in any conduct in violation of this chapter.

(b) The commissioner shall have the power to examine and investigate into the affairs of every insurance-support organization acting on behalf of an insurance institution or insurance representative which either transacts business in the commonwealth or transacts business outside the commonwealth that has an effect on a person residing in the commonwealth in order to determine whether such insurance-support organization has been or is engaged in any conduct in violation of this chapter.

Added by St.1991, c. 516, 1,

15. Violations; notice; hearings; service of process

(a) Whenever the commissioner has reason to believe that an insurance institution, insurance representative or insurance-support organization has been or is engaged in conduct in the commonwealth which violates this chapter, or if the commissioner believes that an insurance-support organization has been or is engaged in conduct outside the commonwealth which has an effect on a person residing in the commonwealth and which violates this chapter, the commissioner shall issue and serve upon such insurance institution, insurance representative or insurance-support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice, the date of such hearing shall be not less than twenty -one business days after the date of service.

(b) At the time and place fixed for such hearing the *insurance* institution, insurance representative or insurance-support organization charged shall have an opportunity to

answer the charges against it and present evidence on its behalf. Upon good cause shown, the commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person,

(c) At any hearing conducted pursuant to this section the commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the commissioner. If no stenographic record is made and if judicial review is sought, the commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of the commonwealth.

(d) Statements of charges, notices, orders and other processes of the commissioner under this chapter may be served by anyone duly authorized to act on behalf of the commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other process shall be provided to the person or persons whose rights under this chapter have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

Added by St.1991, c. 516, $ 1

16. Agent for service of process

For the purpose of this chapter, an insurance-support organization transacting business outside the commonwealth which has an effect on a person residing in the commonwealth shall be deemed to have appointed the commissioner to accept service of process on its behalf; provided, however, that the commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance-support organization at its last known principal place of business. The return postcard receipt for such mailing shall be sufficient proof that the same was properly mailed by the commissioner.

Added by St.1991, c. 516, $ 1.

17. Findings; orders to cease and desist; reports

(a) If, after a hearing pursuant to section fifteen, the commissioner finds that the insurance institution, insurance representative or insurance-support organization charged has engaged in conduct or practices in violation of this chapter, the commissioner shall put such findings in writing and shall issue and cause to be served upon such insurance institution, insurance representative or insurance-support organization a copy of such findings and an order requiring such insurance institution, insurance representative or insurance-support organization to cease and desist from the conduct or practices constituting a violation of this chapter.

(b) If, after a hearing pursuant to section fifteen, the commissioner determines that the insurance institution, insurance representative or insurance-support organization charged has not engaged in conduct or practices in violation of this chapter, the commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurance institution, insurance representative or insurance-support organization charged and upon the person or persons, if any, whose rights under this chapter were allegedly violated.

(c) Until the expiration of the time allowed under section nineteen for filing a petition for review or until such petition is actually filed, whichever occurs first, the commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under section nineteen for filing a petition for review, if no such petition has been duly filed, the commissioner may, after notice and opportunity for **hearing,** alter modify or set aside, in whole or in part, any order or report issued under

this section whenever conditions of fact or law warrant such action or if the public interest so requires.

Added by St.1991, c. 516, $ 1.

$ 18. Penalties; violations **of cease and desist orders**

(a) In any case where a hearing pursuant to section fifteen results in the findings of a knowing violation of this chapter, the commissioner may, in addition to the issuance of a cease and desist order as prescribed in section seventeen, order payment of a monetary penalty of not more than one thousand dollars for each such violation; provided, however, that:

(1) in a hearing to which an insurance representative is a party, the monetary penalty imposed against such insurance representative shall not exceed ten thousand dollars in the aggregate for multiple violations; and

(2) in a hearing to which an insurance institution or insurance-support organization is a party, the monetary penalty imposed against such insurance institution or insurance-support organization shall not exceed fifth thousand dollars in the aggregate for multiple violations.

(b) Any person who violates a cease and desist order of the commissioner under section seventeen may, after notice and hearing and upon order of commissioner, be subject to one or more of the following penalties, at the discretion of the commissioner:

(1) a monetary fine of not more than ten thousand dollars for each such violation;

(2) a monetary fine of not more than fifth thousand dollars if the commissioner finds that such violation has occurred with such frequency as to constitute a general business practice; or

(3) suspension or revocation of an insurance institution's or insurance representative's license.

Added by St.1991, c. 516, $ 1.

19. Judicial review; filing deadline; jurisdiction; orders

(a) Any person subject to an order of the commissioner under section seventeen or section eighteen or any person whose rights under- this chapter were allegedly violated may obtain a review" of any order or report of the commissioner by filing in the supreme judicial court, within twenty days from the date of the service of such order or report, a written petition requesting that the order or report of the commissioner be set aside. A copy of such petition shall be simultaneously served upon the commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript, the supreme judicial court shall have jurisdiction to make and enter a decree modifying, affirming or revcrsing order or report of the commissioner, in whole or in part. The findings of the commisioner as to the facts supporting any order or report, if supported by clear and convincing evdence, shall be conclusive.

(b) To the extent an order or report of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or report of the commissioner. If any party affected by an order or report of the commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the commisioner in such manner and upon **such** terms and conditions as the court may deem proper. The commissioner modify his findings of fact or make new findings by reason of the additional eveidence so taken and shall file modified or new findings along with any recommendation, if any for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new' findings shall bc, conclusive as to the matters contained the rein

(c) An order or report issued by the commissioner under sections seventeen or eighteen shall become final:

(1) upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the commissioner may modify or set aside an order or report to the extent provided in subsection (c) of section seventeen; or

(2) upon a final decision of the supreme judicial court if the court directs that the order or report of the commissioner be affirmed or the petition for review dismissed.

(d) No order or report of the commissioner under this chapter or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of the commonwealth.

Added by St.1991, c. 516, $ 1,

$ 20. Equitable relief; damages; costs and attorney's fees; limitation of actions

(a) If any insurance institution, insurance representative or insurance-support organization fails to comply with sections eight, nine or ten with respect to the rights granted under said sections, any person whose rights are violated may apply to the superior court, or any other court of competent jurisdiction, for appropriate equitable relief.

(b) "An insurance institution, insurance representative or insurance-support organization which discloses information in violation of section thirteen shall be liable for special and compensatory damages sustained by the individual to whom the information relates.

(c) In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

(d) An action under this section must be brought within two years from the date the alleged violation is or should have been discovered.

(e) Except as specifically provided in this section, there shall be no remedy or recovery available to an individual, in law or in equity, for an occurrence constituting a violation of any provisions of this chapter.

Added by St.1991, c. 516, $ 1.

Q 21. Disclosure of information; immunity

No **cause** of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this chapter; provided, however, this section shall provide no immunity:

(1) for any person who discloses false information with malice or willful intent to injure any person; or

(2) for any person who misidentifies an individual as the subject of information and who discloses such misidentified information to others.

Added by St.1991, c. 516, $ 1.

$ 22. Information obtained by false pretenses; penalties

Any person who knowingly and willfully obtains information about an individual from an insurance institution, insurance representative or insurance-support organization under false pretenses shall be fined not more than ten thousand dollars or imprisoned for not more than one year, or both such fine and imprisonment.

Added b]' St.1991, c. 516, $ 1

ETHICAL TENETS FOR PROTECTION OF CONFIDENTIAL CLINICAL DATA

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PREAMBLE

1. **Right to** privacy is an inalienable right of every American citizen.
2. Patients must have the freedom to fully disclose confidential information to their physicians.
3. It is the traditional duty of the physician to protect the confidential clinical information.
4. Computer technology has altered the risk of unauthorized access to privileged information. Access is virtually invisible.
5. Usc of computers in medicine creates an additional moral obligation.
6. The following ethical tenets concerning computcr-bascd confidcntial patient data delineate the moral commitments. These should be reinforced by statutory laws and intensive education of healthcarc providers and the patient community. Explicit operational standards should further enforce the intent of the tenets and the spirit of the law.
7. When an ethical tenet is written with "shall" as the verb, disciplinary rules must complement the tenc~ and operational standards must reflect the mandatory nature of the tcne~

ETHICAL TENETS

I. ADEQUATE DOCUMENTATION IS AN ESSENTIAL PART OF PRIMARY RECORD SHALL FULLY DOCUMENT THE CARE RENDERED.

"Adequate documetation" means sufficient significant data so that Thc reader of the documentation can understand the clinical situation, the diagnostic conclusion and the therapeutic regimen.

'Esscntial part" means that clinical care and documentation shall be two in.separable components of patient management.

"tire Primary record" means the documetation describing the clinical condition and the care intervention.

"Full document" means to cover the pertinent facts of past clinical history, current status, clin]c:il decisions and efforts to Improvc the physical/mcntal health of Ihc patient.

IL CLINICAL INFORMATION, REVEALED VERBALLY OR RECORDED IN THE PRIMARY CLINICAL RECORD SHALL BE KEPT IN STRICT CONFIDENCE.

"**Clinical information**" is used here in its broadest sense, to include all relevant clinical and socio-economic data disclosed by the patient and others, as we1l as observations, findings, therapeutic interventions and prognostic statements gemerated by the membcrs of the halthcarc team.

"Kept in strict confidencc" means not delibcratcly sharing any part of the clinical information with anyone without explicit permission by the patient/guardian, and that the physician is responsible for guarding the primary clinical record from any unauthorized access. Electronic patient records arc often remote from the physician's sphere of power to control access, but the responsibilit y is not ceascd, only changed. Thccomputcr-based patient record system shall provide the physician with adequate warranty that the clinical data will be securely guarded from unauthorized access.

m. THE PATIENT SHALL BE THE OWNER OF THE IDENTIFIABLE INFORMATION PROVIDED DURING THE COURSE OF THE MEDICAL CARE AS WELL AS OF THE CLINICAL DATA GENERATED IN CONNECTION WITH THE CLINICAL CARE.

Owner neans that the patient,or his legal guardian, alone, has the ultimate total control over the storage, access and change of the identified primary clinical record, and as the owner controls his properties.

"Identifiable information''mcans information linked to personal identifiers such as name, social security number, address, telephonc number, workplace, and other identifiers which may facilitate the identification of the patient.

"Information provided during the course of the medical care" covers [he information volunteered by the patient, by the patient's family, or by his environment.

"During the course of the medical care" intends to li m it the ownership to the information that was disclosed by the patient during the medical examination, discus

sion of the case **management, and** therapy givcn.

"Clincal data generated in connecti"n with the clinical care" refcrs to the diagnostic study results, **consultation reports** and similar subrecords, but does not include the secondary records.

I.V. THE PHYSICIAN SHALL BE THE OWNER OF THE INFORMATION GENERATED BY HIM DURING MEDICAL CARE.

"Physician" in this context includes the physician and mcmbcrs of the healthcarc team.

"Owner the full moral right to privacy and full control of access. Ownership covers the information only, not the information carrying media such as paper, dictation tape or electronic storage media.

"Information generated " represents the diagnostic/ therapeutic / prognostic comments/opinions, decision explanation and choice rationale, i.e., all parts of the clinical reasoning and the pro-fessional interpretation of the data collected. These parts of the primary record are often essential for effective intraprofessional communication and for assessment of the quality of care. The physician's right to professional privacy should be fully protected, to encourage candid recording of the physician's thoughts, suspicions, concerns.

After due consideration and negotiations, other professionals **such as** dent.i.sts, social workers, nurses, and others may wish to be included as professional contributors to the primary clinical records and expect equal protection from unauthorized protection.

V. PRIMARY PATIENT RECORD SHALL BE HANDLED ONLY BY THE PHYSICIAN OR HIS DESIGNEE,

Primary patient record in this context, covers both manual records, kept in the medical records department of the hospital or in the physicians' offices, and automated medical records kept at data centers.

The term "designee" includes the medical record officer(s) (hospital) and office nurse (private office) in the case of manual records, and/or the entireprofessional and non-professional st aff at the data centers, in case of automated patient records.

"Handled", in this context, means collecting, storing, checking, guarding from unauthorized access, and retrieving when appropriate,

VI. PATIENTS SHALL BE KEPT INFORMED OF THE LOCATION, OPERATIONAL PRACTICES AND INFORMATION ACCESS POLICIES OF ELECTRONIC DATA CENTERS.

"Patients" means the entire population of the counmy. "Kcpt informed" means explicit description and explaination of the record storage and access rules and exceptions, as defined in the operational standards of the data centers. These rules and exceptions must be reviewed and approved by the appropriate rcgu-latory organizations.

The data storage/access policies should explain to the patient community the basic rule that the patient is the owner of his own records, and describe the exceptions **such as** regulatory agency functions, or in case of emergency the authorization of the data center'security officer to release key data to the attending physician. Special authorization procedures shall also redescribed such as to legitimate researchers seeking identified clinical information.

WI. THE PRIMARY DUTY OF CLINICAL DATA CENTERS STORING PATIENT RECORDS SHALL BE TO PROVIDE COMPREHENSIVE DATA, IN A TIMELY FASHION, UPON LEGITIMATE DEMAND, TO ASSIST PATIENT CARE MANAGEMENT AND TO PROMOTE PROGRESS IN CLINICAL MEDICINE.

"Primarv dutv''meansthat thedatacentm shall be fully committed to serve the medical data needs. Failure to retrieve requested data should be viewed as breaking a contractual relationship.

"Provideco mmehensivc ~" means to present all the relevant dam in storage, on the patient.

"In timely fashion' 'means that the data release shall not delay the clinical decisions and intawentions. Ergo, "timely fashion" means the most expeditious data release current technology permits.

"Upon legitimate demand" means a care provider, authorized by the patient to request the clinical records, with proof for the purpose for which the records have been requested. The legitimate demand includes mainly the request by a care provider with the intent to render medical care, but it also includes information for quality of care (peer review), teaching andresareh. The legitimate demand shall justify the need for release of the socio-demographic patient identifiers, and the assurance that the recipient of the released data will have the authority and necessary resources for protecting the released data fromunauthorized access by unauthorized persons.

"To assist patient care managment''means that the data release should include; all the data that may help the clinical care provider in the decision making process. This means not only the patient-authorized records, but also algorithmic retrieval of similar cases, as statistical aggregates, to show the prevailing care management process, alternativcs, expected cost outcome, and related benefits.

"Promote progress in medicine" means the responsibility of data centers storing clinical data to continuously monitor the climicat database, derivestatistical inferences, and keep clinical medicine informed about prevalence and occurrence of various clinical conditions, efficicnc y of diagnostic strategics, relative cffec -

tivcncss of various therapeutic choices and long-range outcomcs.

"Paticnt care management means prima facie obligation to assist health delivery, and indirect responsibility for other legitimate users such as teaching, research, administraTivc and fiscal data uses,

VIII. CLINICAL DATA CENTERS STORING PATIENT RECORDS SHALL MAINTAIN APPROPRIATEOPERATIONAL STANDARDS AND RELIABLE DATA SECURITY POLICIFS.

"Clinical data CENTERS means all computer-based systems dealing with patient records, ranging from a solo PRACTITIONERS office computer to large hospital-based data centers and regional data systems, if these data centers regularly store patient records.

"Operational standards" means comprehensive and detailed spcci-fications for data input, storage, processing and disclosure, formal documentation of all personnel policies, employceeducation, gricvanccprocedures, and organizational structure. These operational standards shall be critically reviewed by the overseeing authorities. The clinical data centers shall undergo periodic inspection, monitoring of the effectiveness of the data security system, and evidence for positive attitude of the employees toward the patients' right to confidentiality and the hcalthcare provider's right to privacy.

The clinical data centers shall undergo an initial accreditation process, and periodic renewal of accreditation as a visible method of external control, but, in addition, a stringent internal control system is mandatory, conducted by the supervising group of the data center. Both the external and the in-house control groups shall represent the interests of the patient and the care providers. The regulatory agency shall vigorously examine the clinical data centcr's operating practices, the adequacy and reliability of the hardware, dependability of the applied data security measures, safety and security of storage, effectiveness of processing, and competence of the personnel carrying out the intended functions. The findings of the accrediting agency shall be promptly reviewed by the supervisors of the clinical data center the recommended corrections shall be expeditiously instituted, and the accrediting agency notified about the corrections. Only currently full y accredited clinical data centers should store/retrieve patient records.

Ix. IDENTIFIED SECONDARY CLINICAL RECORDS SHALL RECEIVE CONFIDENTIAL TREATMENT.

"Secondary clinical records" arc the data derived from the primary paticnt record for administative, li.seal, epidemiologic and other similar purposes. Secondary records arc created for a limitcd purpose, arc not a part of the treatment, and not a part of professional communication to contribute to the care of the patient. A rcport by a physician employed by an insu~mpan~r to assess a disability, is a Sccondar, record.

"Identified secondary record" refers to the unique patient identifiers such as name, address, telphone number, or Social Se-curity number. "Identified secondary record" also refers [o unique identifiers of the care providing physician, hcalthcarc team and institution, entitled to right to privacy.

X. IDENTIFIED SECONDARY HEALTH-CARE-RELATED RECORDS SHALL BE USED ONLY FOR THE ORIGINAL PURPOSE FOR WHICH THEY WERE GENERATED, AND SHALL BE DESTROYED, OR AT LEAST MISIDENTIFIED, A S PROMPTLY AS POSSIBLE.

" scd Used only for the orginal porpose for which they were generated limits the use of secondary medical information for the sole purpse forwhich the record was requested. For example, it would be unethical to usc a psychiatric registry for comparison with the list of applicants for gun license, or to find drug users. The patient's right to confidentiality would be violated if medical information shared in an atmosphere of apparent confidence would be used for law enforcement or other non-medical purposes.

"Destroyed" means physical destruction of a paper document or purging an electronic database to remove the data once the task is accomplished. For instance, third party carries should destroy the claims, once the fiscal transaction is completed. For actuarial purposes, disidentified data could be used, when feasible.

Release of any aggregate data derived from primary or secondary medical records, such as research reports shall be in such form as not to permit the identification of any persons whose identified records were utilized in the research. It shall be the responsibility of the researcher to ensure that these conditions are met. If for public health or research purposes, any release of identified secondary information shall be desirable or appropriate, the informed consent and explicit formal authorization of the patient or his guardian shall be sought and attained prior to such release. Release of identified primary or secondary patient records to a researcher who is not a part of the patient's healthcarc team shall, of course, also require the informed consent and explicit formal authorization of the patient or his guardian.

XI. FACH DATA CENTER HANDLING IDENTIFIED MEDICAL DATA SHALL EXPLICITLY DEFINE ITS SPECIFIC COALS. THESE GOALS SHALL BE MORALLY CONSISTENT AND COMPATIBLE.

"Data ccntcr" means the entire ensemble of people who have access to the data, including those at the data gcncration site, transmission to the data centcr, and all those who work directly with a computer-bawd mcdical

information handling system and those who provide data for such an information system, The same rules shall apply also to those who participate in manual handling of medical information. In the hospital, the medical records department shall be responsible for the identification of all the groups, offices and individuals who provide data for any type of computerization, ranging from utilization reports to business office and to quality assurancc groups. Such a study should be summarized in the form of a data security report The report should be reviewed by the (medical) executive committee of the hospital and filed with their minutes. Another copy should be scrutinize by the hospital administrator and the advisory board, and after approval, a copy of this document should be kept on file. Any change in data release practices in the hospital should be formally recognized, and copies of the report should be filed with the above two groups (medical executive committee and advisory board).

Particular attcntion should be devoted to the process of data transfer. In some hospitals commercial telecommunication systems arc used for data transfer. The hospital is also responsible for the selection of the data security criteria and for supervision of the operation of such an intermediary telecommunication system.

Thus the term "data center''covers the entire path of data flow, from the paticnt to the computer opcration and includes the data providers, data processor, and data users.

"Handling"means bothphysical access forproccssing and storage and dissemination.

"Handling identified medical data" means all those who handle the medical data or who may have access to such data during thecourscof their work such as cleaning personnel.

"Identificd **medical data" means any** combination of a patient identifier and a clinical datum. The patient identifier may be direct and unique such as name, or address, or Social Securitynumber, orless specific such as date of hospitalization with record number or birth date, or implicit such as the data person's social identified, insurance numbers. The term "Identified medical data'' shall be interpretedbroadly since even nonspecific implicit idcntificxs maybe used to "track down" a data person. This is a rather simple procedure. It is possible to combine the medical data listing with another listing. For example, in a community databank, an explicit list of the population may be combined with medical data listing which may fully identify the data person.

"Medical data" includes both the primary and the secondary medical records as defined in the Ethical Guidelines.

"Shall means a moral legal imperative. Violation means punitive measure.

"Explicity define''mc.ansa formal document drafted specifically to define the goals.

"Specific goals" of a data centcr arc the formally and explicitly defined purposes for medical data collcc**tion, processing, storage and dissemination. The** borders of these specific goals shall be sharply defined. For example, if the data centcr's only goal is to process reimbursement claims for an insurance carrier, this goal must & sharply defined, excluding all other related.cd functions such as actuarial studies, diseases registries or patient history files. After the initial definition of the specific goals, any subsequent change in goals shall require formal amendment of the original document stating the reason(s) and the extent of the change and/or the exact expansion of the initial goal. In most general terms, the definition of the specific goals also justifies the collection of medical data. The goal maybe support of medical care, necesary administrative managerial, an epidemiologic study, fiscal processing of claims, monitoring of the quality or appropriateness of medical care, drug evaluation or follow-up of a therapeutic procedurc. It is possible that a data center collects medical data for more than one goal, such as the recently created state-wide governmental data centers. In such cases, each goal shall be defined separately, with justification of each goal.

"Morrally **means that the data** center shall honor the moral principles of the Ehical Guidclincsand therefore, morally conflicting goals shall not be combined. As a simple rule, medical goals should not be combined with non-medical goals. For example, a psychiatric registry should be justified only for medical poposes such as the study of the natural course of [illegible] or evaluation of the effectiveness of various drugs. The same psychiatric registry shall not be used for non-medical purposes such as gun license control, legal or criminal evidence gathering. If a data center's stated goal is fiscal processing or reimbursement claims, the same database should not be used for evaluation of quality of care. 'Those who pay for servises should not judge these services since such a combination would be a conflict of interests. (Similar combination of conflicting functions in the legal branches would be equally objectionable.) Based on the same reasoning, if the goal of a data center is administrative, such as a govcrnmental data system, it should not be combined with madical or fiscal purposes such as public health or insurance fraud. The chosen goals of a medical data center shall not be selfserving or possible leading to any conflict of interests. The three branches of the health industry should remain sharply separated. These arc: (1) Medical purposes, (2) Fiscal purposes, (3) Administrative monitoring purposcs.

"Compatible" means that in case of multiple goals these should be synergistic toward the stated purpose.

The intent of this rule is to encourage the development of dedicated medical data centers with highly visible purpose.

XII. EACH DATA CENTER HANDLING IDENTIFIED MEDICAL DATA SHALL FORMULATE AND MAINTAIN ITS OWN OPERATIONAL RULES AND PRACTICE.'.

"Formulate" means a writtcn, formal and comprehensive document describing the data center's opcrational rules and practices. This documcnt should be known to all employecs, and all those who deal with the data center.

"Maintain" means a continuous running account of the prevailing rules and prioritics, with regular updaing as wel as periodic rc-evaluation of the document containing the operational rules and practices. proper maintenance of this fundamental document shall keep the documcnt currcnt

"Opcrational rules and practices" means explicit description of the staffing, authority rules, general polices, specific regulations defining data acquisition, storage, access, right to modify, right to process and rules of dissenubation and releasc of identifiable medical information. Thc operational rules shall coverall aspects of the operation of the data centcr.

The intent of this rule is to encourage a highly structured and formalizcd operation when dealing with sensitive medical data.

XIII. THE CHOSEN GOALS AND THE OPERATIONAL RULES AND PRACTICES SHALL BE FORMALLY ENDORSED BY THE OPERATIVE AUTHORITIES AND BY THE PROVIDERS OF THE MEDICAL DATA. THE AUTHORIZED GOALS AND OPERATIONAL RULES AND PRACTICES SHALL BE MADE PUBLIC AND AVAILABLE TO ALL DATA PERSONS.

"Chos e "refccs to the documcntdcfined in the eleventh rule of this ocumcn~

'Opcrational rules and practices "refers to thedocumcnt defined in the twelfth rule of this guideline. These two documcnts constitute the charter of the medical data center.

"formallv endorsed" means that the medical data center's charter shall be reviewed, accepted and formally approved, after due process, and according to the organization's own hierarchical structure, constitution and by~~laws.

61 Opcative authoritie " means all those who may, organizationally and/or fiscally, control the data center. In a hospital, these operative authorities may include the hospital administration, the board of directors and the cxecutivc committee of the medical staff. In a state health department, the operative authorities may include (a) the health commissioner, (b) the legislators (assembly and senate) and (c) the governor's office.

In the health/life insurance indus, this may include the members of thc board, officers, administrators and local managcrsof any stock company, mutual funds, BlucCrossor Blue Shield type organizations and administrators of any govcrnment plan or law, and also those who have thc right to appoint or promote the director and the staff mcmbcrs and/or those Who may affect he budget of the data systemq. Thus the charter of a medical centcr must be recognized, endorsed and fully respected by the supporting organization.

"Providers of medical data" means only the physicians and all other members of the healthcare providing team who had generated the medical information which is subsequently handled by the data center. Thus the ultimate responsible party is the person who generates the medical data and is directly responsible to the patients. Provider o f medical data' 'cannot be a hospital or a clinic clerk. The medical data generator shall be directly rcsponsiblc for the adequacy of the charter.

"Made public" means making it readily available to any justifiably interested person.

"Available to all data persons" means all those individuals (patients) about whom any identified or identifiable data are kept and/or processed by the data ccntcr.

The intent of this rule is to achieve full endorsement and ac-ceptance of the charter by the entire organization which may exert any pressure on the data center for access or releasc of any data. This rule intends to protect the data center from external influences so that the full and undivided responsibility is con-centrated in the hands of the leaders of the data center. Clinical medicine must be fully aware of the charter of the data center in order to assess the implicit risks of data generation/ release. Thus the charter shall be a carefully drafted, highly visible document the moral foundation of the medical data center.

XIV. EACH MEDICAL DATA CENTER SHALL FORMULATE 113 OWN EXPLICIT PERSONNELPOLICIES IN REGARD TO CONFIDENTIALITYAND PERSONNEL INTEGRITY AND SHALL DESCRIBE THESE POLICIES INTHEOPERATIONAL RULES AND PRACTICES.

"Formulate its own e~xdicit personncl policicS" means detailed job descriptions, succinct definition of rights and responsible of each job, including, but not limited to:

- education requirements,
- required job experience,
- extent of required formal training in medical ethics.

The document shall cover hiring practices and gathering of various types of references.

A copy of the current records of the personnel shall be kept in a file accessible to the accrediting agency.

Before hiring the candidate shall review charter, fully understand the data center's purpose and operational rules and sign an agreement to honor the charter of the data systcm.

Any violation of an ethical rule shall lead to invcstigation and dismaissal by duc process, and with formal

notification of the accrediting agency so that a list of dismissed people is available [o data centers, upon authorized inquiry.

The personnel policies shall require regular "in-serviice" meetings with mandatory attendance by the personnel of the data center. These in-service meetings should focus on medical ethics as it relates to the patient's inalienable right to privacy. These in-service meetings shall be integrated with periodic attendance of national meetings concerned with some ethical aspects of medical information processing. The participants of in-service meetings and national meetings shall keep detailed records of these meetings. Organized efforts shall be made to make (and keep) the personnel of the data center constantl y aware of the absolute necessity of ethical behavior and moral integrity, not only at the job, but encompassing their entire personal life. The general rules shall be similar to those adopted by organizations protecting classified military information.

The medical data center shall maintain a general model of ethical guidelines specifically drafted for data center directors, systems analysts, programmers, machine operators, clerical employees, and in particular for data security officers.

The intent of this rule is to explicate the necessary sclfimposed (voluntary) self-control and professionalism for the staff of the data center which is traditional in clinical medicine, nursing and allied health professions. Since the medical data center is a newcomer to clinical medicine, this rule intends to transfer the prevailing attitudc of the hcalthcarc providers to the ncwcomcr, the staff of the data center.

XV. EACH MEDICAL DATA CENTER SHALL DEVELOP AND MAINTAIN A CONTROL RECORD ON ALL MEDICAL DATA IN THE DATABASE.

"Develop" means an explicit description of the types of potentially sensitive data collected / stored / processed /released. Thesc data shall be fully characterized covering origin, structure, and format. Thus the first part of the CONTROL RECORD is the- of all the sensittive data types with adequate characterization of each of the data types.

"Maintain" means continuous updating of the Medical Data Control Record, to keep it current and accurate. Any discrepancy between the Data Control Record and the database would indicated either negligence or deliberate misinformation of the accrediting agency.

The Control Record of Medical Data shall enumerate each data type collected, stored, processed and released by the data center. In addition to cataloging the Control Record shall keep a detailed dcscription of the fate of the data type once it is generated by the healthcarc provider such as the physician, nurse or mcdical record administrator. The minimum list of information to be kept is:

- **the** name of thc **datum** (such as first discharge diagnosis, or surgery performed);
- definition of the datum focusing on the generation and circumstances of recording at the site of patient care;
- dcscriptionof generator who lcnds a definable authority to the datum;
- codc(s) applied to transform the narrative natural language datum into machine-compatible symbols; this segment requires also the filing of the code scheme if the codes arc by local authority;
- method of coding such as manual or automated; if manual the coder shall be identified;
- data field characteristics and typical data structure;
- level of accuracy and reliabilitv of each datum;
- of the datum after entry: storage, address, data protection attached (access rules);
- authorized use of the datum and legitimate recciver(s) of the datum, identified and disidcntified, protection of data integrity;
- owncr of the datum, right to edit, moral obligation to the data person:
- risk value; Level of sensitivity and danger of accidental or malicious access:
- mode and duration of storage; - any other pertinent information such as date of beginning of collection, typical volume at any time, relationship to the goal of the data center, etc.

The intent of this rule is to demand formal documcntation of the database, collection, access and storage. This Data Control Record shall be an essential document for external audit and accreditation.

XVI. EACH DATA CENTER SHALL DEVELOP AND MAINTAIN A DIRECTORY OF DATA USERS.

"Develop" means construction of a formal listing. The director is responsible for the construction and Completeness of this list. No identified or misidentified data should be released or persons or organizations not listed on the users' directory.

"Maintain" means continuous updating in order to keep the **users'** directory **current**

"Directory "meansa comprehensive tabulation with each user's name, address, telephone number, exact description of the user's position and background, the right-to-see aspects, specific level of authorization and method of data protection at the user's site. If identified medical data arc released to a user, the data center remains responsible for the supervision of data security at the user's site.

"Data user" is a person, or an institution/agency receiving directly or indirectly, regularly or occasionally, identifiable medical data, formally defined by the data center.

The dcscription of specific authorization for each user shall explicitly state the type of data for which the authorization has been issued, as wc1l as the amount of formal orientation provided concerning the ethical rc-sponsibilitics of the data uscr, the outlinc of the process of physical disposition of all hardcopy rcports after their use, or the local proteivc measures for storage of lhcsc hard copy reports.

The ntcntof this rule is to describcthc authorizaion process and to explicitly state the responsibility of the data processing ccntcr for the data rcleascd. The users must be defined in the charter, in general, and in the users' directory in particular.

XVII. THE SCOPE OF DATA COLLECTION AND THE EXTENT OF DATA PROCESSING MUST BE EXPLICIT AND LIMITED TO THE STATED GOAL OF TIIE DATA CENTER.

Scope of data collection "on" is thc collective term for all identified medical information entered into the information system, as well as all the non-medical data gathered.

"Extcnt of data processing" is the dcfinition of the series of steps in routine information processing.

"Explicit" *means* clear and specific delineation of the scope of data collection and the extent of data processing.

"Limite to the stated goals" means that every data processing step shall be justifible and explainable as a necessary step for achieving the objectives of the data system, as stated in the charter.

The intent of this rule is to prevent collection of any data not obviously needed for the stated goals and to prevent data processing beyond the stated goals. For example, to an administrator it may seem useful and economical to link a patient's medical data to his school records, criminal records, or tax records. This may assist the educational authorities, police, or IRS. However, from amoral point of view, any such file linkage, unless it is stated in thc goals, would bean abuse of medical data processing. File matching shall not be permited without its description in the charter and **without written con.sent** of the data person(s) or their representative and by the data generator(s), as well as after written consent by the accrediting agency. The staff of the information system shall be acutely aware of the moral constraints which limit the data handling to the chosen stated goal,

XVIII. ADEQUATE DATA SECURITy' MEASURES SHALL BE DEVISED AND MAINTAINED, TO PROTECT TIIE INTEGRITY AND CONFIDENTIALITY OF IDENTIFIED MEDICAL INFORMATION.

"Adequate data security measures" means that the degree of data security shall be proportional to the risks and to the sensitivity of each medical datum. To achieve this focused **protection the information system shall** develop a specific assessment of the potential risk for each data clement if released to an unauthorized user. This way, the data center shall determine the consequenccs of any errors in terms of inadvcrtcnt loss or alteration of the data, and the potential injury if a confidential datum is accesscd by an unauthorized person. In the planning process, the cost of various data security measures shall be considered in the light of their social damage. Clear documentation shall support the rationale of choosing the actual security measures, listing also all reasonable alternatives.

"Devised" **means a** fully cohesive system of data security **measures.**

"Mainntained" means regular periodic testing of the data security in order to ascertain that both the human and technical aspects of the security system arc kept at the lcvcl selected initiall y by the planners of thes systcm. Periodic internal testing of the security shall be formally documented.

The intent of this rule is to requirc a formally documented data security system as an inseparable part of the Operational Rules and practices in the charter.

XIX. EACH DATA PROCESSING GROUPHANDLING IDENTIFIED MEDICAL DATA SHALL NAME SINGLE INDIVIDUAL TO BE RESPONSIBLE FOR DATA SECURITY.

"Name" means a formal appointment of a person and record this action in the charter.

"Single individual" means a member of the information system's staff throughout the period of operation. 'There shall be another individual substituting during illness or vacations, appointed on a temporary basis by the individual named as the person responsible for security. This also means that a data system shall have a responsible person prcscnt throughout the scheduled operation, and that the data system shall never operate without the presence of the data security person.

"Responsibe" means moral and legal liability. The person re-sponsiblc for the day-to-day control of all data security measures shall be an individual with adequate background in medical records and data processing, and with special formal training in data security measures,. It is not acceptable to appoint a medical record or a data processing person to scrvc as data security officer, unless this person can prove training and experience spccify_-cally **in** the area of data security. This person should hold periodic meetings with the members of the data centcr to discuss data security, and this person should regularll attend national meetings where advances in data protection.

The intent of this rule is to stress that a data security person responsible for sensitive medical data must meet both technical and ethical standards. The latter requires the presence of the person responsible for data security. If the data system's staff is small and it is not practical to separate technical and ethical responsibilities, special

plans shall bc formulated for satisfactory combination of the two functions.

XX. THE DATA SECURITY PERSON SHALL MAINTAIN DAILY RECORD OF EVENTS RELATED TO DATA PROTECTION. THIS DAILY RECORD SHALL BE ACCESSIBLE TO ACCREDITING AGENCIES

"Data security person" is the formally appointed person as defined in the nineteenth rule.

"Maintain" means keeping the record on a day-to-day basis.

"Events related to data protection" includes all hardware problems, programming events and routine procedures which may have an impact temporary or permanent, on the formal data security program. For example, a hardware failure requiring repeat collection or entry of data, or a request by a user different from established routine, shall be recorded on a day-today basis. In emergency situations, the data security person shall be the only authorized person to release data which deemed justified, but a retroactive authorization will be necessary following such an event

"Accessible to accrediting agencies" means that the daily data security record shall be submitted to the accrediting agency, as an important document reflecting the quality of data security. Periodic review of this document by the supporting agency seems appropriate but not mandatory. This decision should be a part of the accrediting process.

The intent of this rule is to formalize the role of the data security person. The daily record is intended to keep those responsible for the data security system vigilant and aware of the importance of the privacy aspects.

XXI. THE DATA AS WELL AS THE DATA PROTECTION PRACTICES SHALL BEAVAILABLE TO THOSE JUSTIFIABLY **REQUESTING INFORMATION ABOUT THEMSELVES**

"Data" means those particular **medical and identifying data which are stored in one data person's file.**

"Dataprotection pratices" **means a copy of the security systems described in the** Chatter.

"Availabe" means access upon regulated requcst.

"Justifiably" means According to the Freedom for Information Act

The intent of this rule is to **provide for access of** information **kcpt on fileb about a data person. Dueproeess shall be devised enabling the data person to request corrcetion when this is due, i.e., when the data person has** provided adequate evidence showing that a particular datum is incorrect. If **the error is due to a data entry error the data center is responsible for the correction, whereas** if the error was at the **site of the data generation, the** health provider **shall modify the datum.**

XXII. THE DATA **CENTER PROCESSING IDENTIFIED MEDICAL DATA SHALL BE LI**ABLE FOR INTEGRITY AND PROTECTION OF THE MEDICAL DATA.

"Liable" means **moral and legal responsibility.**

"Integrity" means the accuracy of the data, exact correspondence with the source document While the hcaltheare provider is responsible for the clinical accuracy of the generated data the data centcr is liable for protection of data integrity, processing without loss, distortion or any **other alteration.**

"Protection" means guarding from unauthorized access.

The intent of this rule is to state the prirmary and direct responsibility of the data center.

Uniform Health Care Information

50-16-501. Short title. This part may be cited as the "(Uniform Health Care Information Act".

History: **En. .Sec. 1. Ch. 632, I.. 1987.**

50-16-502. Legislative findings. The legislature finds that:

(1) health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy and health care or other interests;

(2) patients need access to their own health care information as a matter of fairness, to enable them to make informed decisions about their health care and to correct inaccurate or incomplete information about themselves;

(3) in order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

(4) persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of his health care information survives even when the information is held by persons other than health care providers.

(5) the movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information.

History: En. Sec. 2, **Ch.** 632, L. 1987.

50-16-503. Uniformity of application and construction. This part must be applied and construed to effectuate their general purpose to make uniform the laws with respect to the treatment of health care information among states enacting them.

1 History: **Eh. Sec. 3, Ch. 632, I. 1987.**

50-16-504. Definitions. As used in this part, unless the context indicates otherwise, the following definitions apply

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

(a) statutory, regulatory, fiscal, medical, or scientific standards;

(b) a private or public program of payments to a health care provider: or

(c) requirements for licensing, accreditation, or certification.

(2) "Directory information" means in information disclosting the presence and the general health condition of a patient who is an inpatient in a health care facility or who is receiving emergency' health care in a health care facility.

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

(4) "Health care" means any care, service , or procedure provided by a health care provider, including medical or psychological" diagnosis, treatment,

evaluation, advice, or other services **that** affect the structure or any function of the human body.

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

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical devices.

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

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

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

(11) "Peer review" means an evaluation of health care services by a committee of a state or local professional organization of health care providers or a committee of medical staff of a licensed health care facility. The committee must be:

(a) authorized by law to evaluate health care services; and

(b) governed by written bylaws approved by the governing board of the health care facility or an organization of health care providers.

(12) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

History En. Sec. 4, Ch. 632, 1,. 1987.

Cross-References

Government health care information – defi nition of health care in informat ion, 50-16-602.

50-16-505 through 50-16-510 reserved.

50-16-511. Duty to adopt security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

H i story: Kin. Sec. 21, (Ch. 632, 1,.1987.

50-16-512. Content and dissemination of notice. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a notice of information practices, in substantially the following form:

NOTICE

"We keep a record of the health care services we provide for you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at . . . . . .

(2) The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and upon request provide patients or prospective patients with a copy of the notice.

History: En. Sec. 18, Ch. 632, L. 1987.

50-16-513. Retention of record. A health care provider shall maintain a record of existing health care information for at least 1 year following receipt of an authorization to disclose that health care information under 50-16-526 and during the pendency of a request for examination and copying under 50-16-541 or a request for correction or amendment under 50-16-543.

History: En. Sec. 22, Ch. 632, L. 1987.

Cross-References

Records and reports required of health care facilities – confidentiality, 50-5-106.

Maintenance and confidentiality of records concerning develpmentally' disabled persons, ,53-20-161.

50-16-514 through 50-16-520 reserved.

50-16-521. Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this part to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized under 41-1-402 to consent to health care without parental consent, only the minor may exclusively exercise the rights of a patient under this part as to information pertaining to health care to which the minor lawfully consented.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

History: **En. Sec. 19, Ch. 632, L. 1987.**

50-16-522. Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this part, If there is no personal representative or upon discharge of the personal representative, a deceased patient's rights under this part may be exercised by the surviving spouse, a parent, an adult child, an adult sibling, or any other person who is authorized by law to act for him.

History: En. Sec. 20, Ch. 632, L. 1987: amd. Sec. 1, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment Near end substituted "the surviving spouse, a parent, an adult child, an adult sibling, or any other person" for "persons"; and made minor change in grammar

50-16-523 and 50-16-524 reserved.

50-16-525. Disclosure by health care provider. (1) Except as authorized in 50-16-529 and 50-16-530 or as otherwise specifically provided by law or the Montana Rules of Civil Procedure, a health care provider, an individual

who assists a health care provider in the delivery of health care, or an agent or employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

(2) A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the preceding 3 years, except for a person who has examined the recorded health care information under 50-16-529(1) or (2). The record of disclosure must include the name, address, and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination, and to the extent practicable a description of the information disclosed.

History: En. Sec. 5, Ch. 632, L. 1987; amd. Sec. 2, Ch. 657, L. 1989.

Compiler's Comments

1989 Amendment Near end of first sentence of (?), after "except for", deleted "an agent or employee of the health care provider or" and after "50- 16-529" inserted "(1) or",

Cross-References

Right of privacy, Art. II, sec. 10, Mont. Const.

Physical and mental examination of persons, Rule 35, M. R. Civ.P. (see Title 25, ch. 20).

Doctor-patient" privilege, 26-1-805.

Privileges, Rules 501 through 505, M. M.R.E (see Title 26, ch. 10).

Gunshot or stab wounds – reporting by' health care practitioners, 37-2-302.

Release of Information by physician (concerning minor, 41-1-403.

Records and reports required of health care facilities – confidentialility}, 50-5-106.

Confidentiality' under 'Tumor Registry} Act, ***50-15-*** **'704.**

Unauthorized divulgence of serological test information, 50-19-108.

Maintenance and confidentiality of records concerning developmentally disabled person, **53-20-161.**

Confidentiality of records concerning mental illness, 53-2 I -166.

Records of chemically dependent persons, intoxicated person, and familly" members, 53-24-306.

50-16-526. Patient authorization to health care provider for disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under 50-16-542.

(2) A health care provider may charge a reasonable fee, not to exceed his actual cost for providing the health care information, and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider must:

(a) be in writing, dated, and signed by the patient:

(b) identify the nature of the information to be disclosed; and

(c) identify the person to whom the information is to be disclosed.

(4) Except as provided by this part, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the Montana Rules of Evidence, or common law.

History: En. Sec. 6. Ch. 632. 1.. 1987.

Cross-References

Privileges, Rules 501 through 505, M.R, E\', (we Title 26, ch. 10),

50-16-527. Patient authorization — retention — effective period exception. (1) A health care provider shall retain each authorization or

revocation in conjunction with any health care information from which disclosures are made.

(2) Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to health care that the patient receives more than 6 months after the authorization was signed.

(3) An authorization in effect on October 1, 1987, remains valid for 30 months after October 1, 1987, unless an earlier date is specified or it is re~'eked under 50- 16-528. Health care information disclosed under such an authorization is otherwise subject to this part, An authorization written after October 1, 1987, becomes invalid after the' expiration date contained in the authorization, which may not exceed 30 months. If the authorization does not contain an expiration date, it expires 6 months after it is signed.

(4) Notwithstanding subsections (2) and (3), a signed claim for workers' compensation or occupational disease benefits authorizes disclosure to the workers' compensation insurer, as defined in 39-71-116, by the health care provider. The disclosure authorized by this subsection relates only to information concerning the claimant's condition. This authorization is effective only as long as the claimant is claiming benefits,

History En. Sec. 7, Ch. 632. 1.. 1987; **amd. Sec. 13, Ch. 333, L, 1989.**

Compiler's Comments

1989, Amendment: Inserted (4) allowing dis-Closure health care in information by health care provider to insurers or in information relating claimant's condition so long as claimant is receiving benefits. Amendment effective March 27, 1989,

Retroactive **applicability: Section** 16, Ch. 333, 1.. 1989, provided that this section applies retroactively, within the meaning of 1-2-109, to all requests for health care information in workers' compensation claims,

50-16-528. Patient's revocation of authorization for disclosure. A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

History: **Sec. 8, Ch.** 632, L. 1987.

50-16-529. Disclosure without patient's authorization based on need to know. A health care provider may' disclose health care information about a patient without the patient's authorization, to the extent a recipient needs to know the information, if the disclosure is:

(1) to a person who is providing health care to the patient;

(2) to any other person who requires health care information for health care education: to provide planning, quality assurance, peer review, or administrativee, legal, financial, or actuarial services to the health care protvider; for assisting the health care prey'ider in the delivery of health care; or to a third-part] health care payror who requires health care information and if the health care provider reasonably believes that the person will:

(a) not use or disclose the health care information for any other purpose; and

(b) take appropriate steps to protect the health care information;

(3) to any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

(4) to immediate family members of the patient or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with the laws of the state and good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

(5) to a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(6) for use in a research project that an institutional review board has determined:

(a) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(b) is impracticable without the use or disclosure of the health care information in individually identifiable form;

(c) contains reasonable safeguards to protect the information from improper disclosure;

(d) contains reasonable safeguards to protect against directly or indirectly identifying any patient in any report of the research project; and

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

(i') to a person who obtains information for purposes of an audit, if that person agrees in writing to:

(a) remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(b) not disclose the information further, except to accomplish the auditor to report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient or other unlawful conduct by a health care provider; and

(8) to an official of a penal or other custodial institution in which the patient is detained.

History **En. Sec. 9, Ch.632, L. 1987; amd. Sec.3, Ch. 657,1. 1989.**

Compiler's Comments

1989 *Amendment* In (2), after "delivery of health care'', inserted "or to at third-partyhealth care payer who requires health care information"; and made minor change in phraseolo.

Cross-References

Duty of mental health professionals To warm of violent patients, 27-1-1102.

Nonviability for peer review, 37-2-201.

Pharmacists not 1 liable for peer review, 37-7-1101.

Release of information by physician concerning minor, 41-1-403.

Maintenance and confidentiality. of records concern i n g developmentally d i sa bled persons, 53-20-161.

Confidentiality of records concerning mental illness, 53-21-166.

50-16-530. Disclosure without patient's authorization — other bases. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

(1) directory information, unless the patient has instructed the health care provider not to make the disclosure;

(2) to federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

(3) to federal, state, or local law enforcement authorities to the extent required by law;

(4) to a law enforcement officer about the general physical condition of a patient being treated in a health care facility' if the patient was injured on a public roadway or was injured by the possible criminal act of another;

(5) in response to a request of the division of crime control for information under 53-9-104(2)(b); or

(6) pursuant to compulsory process in accordance with 50-16-535 and 50-16-536.

History **En. Sec. 10, Ch. 632. 1.. 1987: amd. Sec. 1, Ch. 68, L. 1989.**

Compiler's Comments

J989 Admendment Inserted (5) allowing disclosure without patient's authorization of informat ion under The Crime Victims compensation Act of Montana upon request by Division of Crime (Control." Amendment effective March **13,** 1989.

50-16-531 through 50-16-534 reserved.

50-16-535. When health care information available by compulsory process. (1) Health care information may not be disclosed by. a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative, or administrative proceeding unless:

(a) the patient has consented in writing to the release of the health care information in response to compulsory process or a discover}" request;

(b) the patient has waived the right to claim confidentiality for the health care information sought;

(c) the patient is a party to the proceeding and has placed his physical or mental condition in issue;

(d) the patient's physical or mental condition is relevant to the execution or witnessing of a will or other document;

(e) the physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary' of the patient;

(f) a patient's health care information is to be used in the patient's commitment proceeding;

(g) the health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party, except that health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for his health care or unless authorized under subsection (i);

(h) the health care information is relevant to a proceeding brought under 50-16-551 through 50-16-553;

(i) a court has determined that particular health care information is *sub*-ject to compulsory- legal process or discovery because the party seeking the information has demonstrated that there is a compelling state interest that outweighs the patient's privacy' interest; or

(j) the health care information is requested pursuant to an investigative subpoena issued under 46-4-301.

(2)Nothingin this part authorizes the disclosure of health care informati$_{o}$n bycompulsory legal process or discovery in any judicial, legislative, or administrative proceeding where disclosure is otherwise prohibited by law.

History: En. Sec. 11, Ch. 632, L. 1987; amd. Sec. 4, Ch. 657, L. 1989.

Compiler'sComments

1989 Amendment Inserted (1)(j) regarding information request ed pursuant to subpoena; inserted (2) regarding disclosure prohibited by law; corrected internal reference; and mad$_{e}$ minor changes in phraseology and form.

Cross-References

Government health care information – legal proceedings, SO-16-605.

50-16-536. Method of compulsory process. (1) Unless the court for good cause shown determines that the notification should be waived or modified, if health care information is sought under 50-16-535 (l)(b), (l)(d), or (1)(e) or in a civil proceeding or investigation under 50-16-535 (l)(i), the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least 10 days before presenting the certificate required under subsection (2) to the health care provider,

(2) Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information or his authorized representative, identifying at least one subsection of 50-16-535 under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under 50-16-535 (1)(b), (1)(d), or (1)(e) or in a civil proceeding under 50-16-535 (l)(i), that the requirements of subsection (1) for notice have been met. A person may sign the certification only if the person reasonably believes that the subsection of 50-16-535 identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

(3) In response to service of compulsory process or discovery requests, where authorized by law, a health care provider may deny access to the requested health care information. Additionally, a health care provider may deny access to the requested health care information under 50-16-542(1). If access to requested health care information is denied by the health care provider under 50- 16-542(1), the health care provider shall submit to the court by affidavit or other reasonable means an explanation of why the health care provider believes the information should be protected from disclosure.

(4) Where access to health care is denied under 50-16-542(1), the court may order disclosure of health care information, with or without restrictions as to its use, as the court considers necessary, In deciding whether to order disclosure, the court shall consider the explanation submitted by the health care provider, the reasons for denying access to health care information set forth in 50- 16-542(1), and any arguments presented by interested parties.

(5) A health care provider required to disclose health care information pursuant to compulsory process may charge a reasonable fee, not to exceed

the health care provider's actual cost for providing the information, and may deny examination or copying of the information until the fee is paid.

(6) Production of health care information under 50-16-535 and this section does not in itself constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure.

History **En. Sec. 12, Ch. 632, 1.. 1987; amd. Sec. 5, Ch. 657, I.. 1989.**

Compiler's Comments

1989 Amendment: Inserted (3) regarding denial of access to information in response to compulsory process or discovery requests; inserted (4) relating to court-ordered disclosure; inserted (5) allowing a fee for providing information; and corrected internal references.

50-16-537 through 50-16-540 reserved.

50-16-541. **Requirements and procedures for patient's examination and copying.** (1) Upon receipt of a written request from a patient to examine or copy all or part of his recorded health care information, a health care provider, as promptly as required under the circumstances but no later than 10 days after receiving the request, shall:

(a) make the information available to the patient for examination during regular business hours or provide a copy, if requested, to the patient;

(b) inform the patient if the information does not exist or cannot be found;

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

(d) if the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than 21 days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) deny the request in whole or in part under 50-16-542 and inform the patient.

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

History En, ('h. 632, L. 1987.

50-16-542. Denial of examination and copying. (1) A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) knowledge of the health care information would be injurious to the health of the patient;

(b) knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidience and under circumstances in which confidentiality was appropriate e;

(c) knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) the health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes;

(e) the health care information might disclose birth out of wedlock orprovide information from which knowledge of birth out of wedlock might be obtained and which information is protected from disclosure pursuant to 50-15-206;

(f) the health care provider obtained the in formation from a person other than the patient; or

(g) access to the health care information is other wise prohibited by law.

(2) Except as provided in 50-16-521, a health care provider may deny access to health care information by a patient who is a minor if:

(a) the patient is committed to amental health facility; or

(b) the patient's parents or guardian have not authorized the health care provider to disclose the patient's health care information.

(3) If ahealth care provider denies are quest for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(4) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (l)(a) or (l)(c), he shall permit examination and copying of the record by another health care provider who is providing health care services to the patient for the same condition as the health care provider denying the request, The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

History: En, Sec. 14, Ch. 632, L. 1987; amd. Sec. 6, Ch. 657, L. 1989.

Compiler's Comments

1989 *Amendment.* Inserted (1)(e) regarding information that might reveal birth out of wedlock.

50-16-543. Request for correction or amendment. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which he has access under 50-16-541.

(2) As promptly as required under the circumstances but no later than 10 days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

(b) inform the patient if the record no longer exists or cannot be found;

(c) if the health care provider does not maintain the record, inform the patient and provide him with the name and address, if known, of the person who maintains the record;

(d) if the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify

in writing the earliest date, not later than 21 days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal, and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

History: En. ***Sec. 15,*** Ch. 632. 1,. 1987.

50-16-544. Procedure for adding correction, amendment, or statement of disagreement. (1) In making a correction or amendment, the health care provider shall:

(a) add the amending information as a part of the health record; and

(b) mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) permit the patient to file as a part of the record of his health care information a concise statement of the correction or amendment requested and the reasons there for; and

(b) mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

History: En. Sec. 16, (C h. 632, 1..1987.

50-16-545, Dissemination of corrected or amended information or statement of disagreement. (1) A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

(2) A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

H istor~: En. Sec. 17, Ch. 632, 1,. 1987.

50-16-546 through 50-16-550 reserved.

50-16-551. Criminal penalty. (1) A person who by means of bribery, theft, or misrepresentation of identity, purpose of use, or entitlement to the information examines or obtains, in Violation of this part, health care information maintained by a health care provider is guilty. of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year, or both.

(2) A person who, knowing that a certificate ion under 50-16-536(2) or a disclosure authorization under 50-16-526 and 50-16-527 is false, purposely

presents the certification or disclosure authorization to a health care provider is guilty of a misdemeanor and upon conviction is punishable by a fine not exceeding $10,000 or imprisonment for a period not exceeding 1 year! or both.

History: **En. Sec. 23, (Ch. 632, L. 1987.**

Cross-References

Government health care information -- penalty, 50-16-611.

Unauthorized divulgence of serological test information, 50-19-108.

50-16-552. Civil enforcement. The. attorney general or appropriate county attorney may maintain a civil action to enforce this part. The court may order any relief authorized by 50-16-553.

History **En. Sec. 14, ('h.** 632, **L,.** 1987.

50-16-553. Civil remedies. (1) A person aggrieved by a violation of this part may maintain an action for relief as provided in this section.

(2) The court may order the health care provider or other person to comply with this part and may order any other appropriate relief.

(3) A health care provider who relies in good faith upon a certification pursuant to 50-16-536(2) is not liable for disclosures made in reliance on that certification.

(4) No disciplinary or punitive action may be taken against a health care provider or his employee or agent who brings evidence of a violation of this part to the attention of the patient or an appropriate authority}'.

(5) In an action by a patient alleging that health care information was improperly withheld under 50-16-541 and 50-16-542, the burden of proof is on the health care provider to establish that the information was properly withheld.

(6) If the court determines that there is a violation of this part, the aggrieved person is entitled to recover damages for pecuniary losses sustained as a result of the violation and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of $5,000, exclusive of any pecuniary loss.

(7) If a plaintiff prevails, the court may assess reasonable attorney fees and all other expenses reasonably' incurred in the litigation.

(8) An action under this part is barred unless the action is commenced within 3 years after the cause of action accrues.

History: En.Sec. **25,** Ch. **632,** L. **1987.**

AMER1CAN HEALTH INFORMATION MANAGEMENT ASSOCIATION

HEALTH INFORMATION MODEL LEGISLATION LANGUAGE

SEC. 101. PREAMBLE

The Congress finds that: --

(a) The right of privacy is a personal and fundamental right protected by the Constitution of the United States;

(b) Health care information is personal and sensitive information that, if improperly used or released, may do significant harm to a patient's interests in privacy and in health care, and may affect a patient's ability to obtain employment, education, insurance, credit, and other necessities;

(c) patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves;

(d) Persons maintaining health care information need clear and certain rules for the disclosure of health care information;

(e) Persons other than health care providers obtain, use, and disclose health care information in many different contexts and for many different purposes. A patient's interest in the proper use and disclosure of the personal health care information continues even when the information has been initially Disclosed and is held by persons other than health care providers; and

(f) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks and networks, and the emergence of multi-state health care providers and payers creates a compelling need for Federal law, rules and procedures governing the use and disclosure of health care information.

SEC. 102. GENERAL DEFINITIONS.

In this [Act] (except as otherwise provided):

(a) AUDIT. --The term "audit" means an assessment, evaluation, determination, or investigation of a person maintaining health care information or health care rendered by such a

person by a person not employed by or affiliated with the person audited to determine compliance with--

(1) statutory, regulatory, fiscal, administrative. medical, or scientific standards;

(2) the requirements of a private or public program of payment for health care; or

(3) requirements for licensure, accreditation, or certification.

(b) COMPULSORY DISCLOSURE. --The term "compulsory disclosure" means any disclosure of health care information mandated or required by Federal or State law in connection with a judicial, legislative, or ach-ministrative proceeding, including but not limited to, disclosure required by subpoena, subpoena duces tecum, request Or notice to produce, court order, or any other method of requiring a person maintaining health care information to produce health care information under the criminal or civil discovery laws of any State or Federal government or administrative agency thereof.

(c) HEALTH CARE. --The term "health care" means:–

(1) any preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, counseling, service, or procedure provided by a health care provider: --

(A) with respect to a patient's physical or mental condition; or

(B) affecting the structure or fiction of the human body or any part thereof, including, but not limited to, banking of blood, sperm, organs, or any other tissue; and

(2) any sale or dispensing of any drug, substance, device, equipment, or other iter to a patient or for a patient's use, pursuant to a prescription.

(d) HEALTH CARE INFORMATION. --The term "health care information" means any data or information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient or other record subject; and--

(1) relates to a patient's health care; or

(2) is obtained in the course of a patient's health care from a health care provider, from the patient, from a member of the patient's family or an individual with whom the patient has a close personal relationship, or from the patient's legal representative.

(e) HEALTH CARE PROVIDER. --The term "health care provider" means a person w-ho is licensed, certified, registered or otherwise authorized by law to provide health care in the ordinary course of business or practice of a profession.

(f) INSTITUTIONAL REVIEW BOARD. --The term "institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under Federal or State law, to review, approve the initiation of, or conduct periodic review of, research programs to assure the protection of the rights and Welfare of human research subjects.

(g) MAINTAIN.--The term "maintain," as related to health care information, means to create, collect, handle, hold, possess, preserve, retain, store, control or transmit such information.

(h) PATIENT. --The term "patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(i) PATIENT'S AUTHORIZATION. --The term "patient's authorization" means an authorization that is valid under the provisions of Section 104.

('j) PATIENT REPRESENTATIVE. --The term "patient representative" shall mean am individual legally empowered to make decisions concerning a patient's health care or the administrator or executor of a deceased patient's estate.

(k) PERSON. --The term "person" means--

(1) an individual, corporation, business trust, estat, trust, partnership, association, joint venture, or any other legal or commercial entity: and

(2) except for purposes of Section 111 and 112. a government, governmental subdivision, agency or authority.

(1) SECRETARY. --The term "Secretary" means the Secretary of Health and Human Services.

SEC. 103. DISCLOSURE.

(a) DISCLOSURE.--NO person other than a patient or patient representative may disclose health care information to any other person without the patient's authorization, except as authorized in Section 105. No person may disclose health care information under a patient's authorization, except in accordance with the terms of such authorization. The provisions of this paragraph shall apply both to disclosures of health care information and to redisclosures of health care information by a person to whom health care information is disclosed.

(b) RECORD OF DISCLOSURE. --Each person maintaining health care information shall maintain a record of all external disclosures of health care information made by such person concerning each patient, and such record shall become part of the health care information concerning each patient. The record of each disclosure shall include the name, address and institutional affiliation, if any, of the person to whom the health care information is disclosed, the date and purpose of the disclosure and, to the extent practicable, a description of the information disclosed.

SEC. 104. PATIENT'S AUTHORIZATION; REQUIREMENTS FOR VALIDITY.

(a) To be valid, a patient's authorization must--

(1) Identify the patient;

(2) Generally describe the health care information to be disclosed;

(3) Identify the person to whom the health care information is to be disclosed;

(4) Describe the purpose of the disclosure;

(5) Limit the length of time the patient's authorization will remain valid;

(6) Be given by one of the following means--

(A) In writing, dated and signed by the patient or the patient representative; or

(B) In electronic form, dated and authenticated by the patient or the patient representative using a unique identifier; and

(7) Not have been revoked under paragraph (b).

(b) REVOCATION OF PATIENT'S AUTHORIZATION. --A patient or patient representative may revoke the patient's authorization at any time, unless disclosure is required to effectuate payment for health care that has been provided to the patient, or other substantial action has been taken in reliance on the patient's authorization. A patient may not maintain an action against a person for disclosure of health care information made in good faith reliance on the patient's authorization, if the person had no notice of the revocation of the patient's authorization at the time disclosure was made.

(c) RECORD OF PATIENT'S AUTHORIZATIONS AND REVOCATIONS .--Each person maintaining health care information shall maintain a record of all patient's authorizations and revocations thereof, and such record shall become part of the health care information concerning each patient.

(d) NO WAIVER. --Except as provided by this [Act], the signing or authentication of an authorization by a patient or patient representative is not a waiver of any rights a patient has under other Federal or State statutes, the rules of evidence, or common law.

SEC. 105. DISCLOSURE WITHOUT PATIENT'S AUTHORIZATION.

A person maintaining health care information may disclose health care information about a patient without the patient's authorization as follows: --

(a) DISCLOSURE TO THE PATIENT OR PATIENT REPRESENTATIVE. --Any disclosure of patient information to the patient or such patient's patient representative;

(b) DISCLOSURE BY FAMILY AND FRIENDS. --Any disclosure of health care information by a family member or by any other individual with whom the patient has a personal relationship, provided that: --

(1) the health care information was disclosed to such individual by the patient or otherwise not in violation of this [Act]; and

(2) the health care information was not disclosed to the individual making the disclosure in the course of providing health care to the patient;

(c) DISCLOSURE TO EMPLOYEES AND AGENTS .--Disclosure, to the extent necessary for the disclosing person to carry out its lawful activities, to the disclosing person's agent, employee, or independent contractor who is under a legal obligation to hold the health care information in confidence and not to use such health care information for any purpose other than the lawful purpose for which the health care information was obtained by the disclosing person;

(d) DISCLOSURE TO ANOTHER HEALTH CARE PROVIDER. --Disclosure to a health care provider who is providing health care to the patient except as such disclosure is limited or prohibited by the patient;

(e) DISCLOSURE TO AVOID DANGER. --Disclosure to any person to the extent the recipient needs to know the information, if the person holding the health care information reasonably believes that such disclosure will avoid or minimize imminent danger to the health or

safety of the patient or any other individual, or is necessary to alleviate emergency circumstances affecting the health or safety of any individual;

(f) DISCLOSURE TO FAMILY. --Disclosure to a member of the patient's immediate family, or to any other individual with whom the patient is known to have a close personal relationship, if such disclosure is made in accordance with good medical or other professional practice, except as such disclosure is limited or prohibited by the patient;

(g) DISCLOSURE TO SUCCESSOR IN INTEREST. -Disclosure to a person who is a successor in interest to the person maintaining the health care information, provided, howe~'er, that no person other than a licensed health care provider or the spouse of a deceased health care provider shall be considered a successor in interest to a health care provider;

(h) DISCLOSURE TO GOVERNMENTAL AUTHORITIES .--Disclosure to Federal, State, or local governmental, authorities, to the extent the perwn holding the health care information is required by law to report specific health care information: --

(1) when needed to determine compliance with State or Federal licensure, certification, or registration rules or laws; or

(2) when needed to protect the public health;

(i) DISCLOSURE FOR AUDITS. --Disclosure to a person who obtains health care information solely for purposes of an audit, if that person agrees in writing: --

(1) to remove from the health care information or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable identification of the patient;

(2) not to disclose in any public report any medical information; and

(3) not to further disclose the health care information, except to accomplish the audit or to report unlawful or improper conduct involving health care payment fraud by a health care provider or a patient, or other unlawful conduct by the health care provider;

(j) DISCLOSURE FOR RESEARCH. --Disclosure for use in a research project:

(1) that an institutional review board has determined: --

(A) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(B) is reasonably impracticable without the use or disclosure of the health care information in individually identifiable form;

(C) contains reasonable safeguards to protect the information from redisclosure;

(D) contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(E) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable identification of the patient, unless the institutional review board authorizes retention of identifying information for purposes of another research project; and

(2) if the person agrees in writing: --

(A) to remove from the health care information or destroy, at the earliest opportunity consistent with the purpose of the research project, information that would enable identification of the patient;

(B) not to disclose health care information in any public report; and

(C) not to further disclose the health care information, except as necessary to conduct the research project approved by the institutional review board.

(k) COMPULSORY DISCLOSURE. --Compulsory disclosure in accordance with the requirements of Section 108;

(1) DISCLOSURE TO LAW ENFORCEMENT AUTHORITIES .--Disclosure to Federal, State or local law enforcement authorities to the extent required by law;

(m) DISCLOSURE DIRECTED BY A COURT. --Disclosure directed by a court in connection with a court-ordered examination of a patient; or

(n) DISCLOSURE TO IDENTIFY A DECEASED INDIVIDUAL. --Disclosure based on reasonable grounds to believe that the information is needed to assist in the identification of a deceased individual.

SEC. 106. STANDARDS FOR INFORMATION PRACTICES.

(a) PROMULGATION OF REQUIREMENTS---

(1) IN GENERAL. --Between July 1, 1994, and July 1, 1995, the Secretary shall promulgate requirements for information practices of persons maintaining health care information. Such requirements shall be consistent with the provisions of this [Act] and shall be in accordance with the principles set forth in paragraph (b).

(2) REVISION. --The Secretary may from time to time revise the requirements promulgated under this paragraph.

(b) PRINCIPLES OF FAIR INFORMATION PRACTICES. --The requirements promulgated under paragraph (a) shall incorporate the following principles:

(1) PATIENT'S RIGHT TO KNOW. --The patient or the patient representative has the right to know that health care information concerning the patient is maintained by any person and to know for what purposes the health care information is used;

(2) RESTRICTIONS ON COLLECTION. --Health care information concerning a patient must be collected only the extent necessary to carry out the legitimate purpose for which the information is collected;

(3) COLLECTION AND USE ONLY FOR LAWFUL PURPOSE. --Health care information must be collected and used only for a necessary and lawful purpose;

(4) NOTIFICATION TO PATIENT. Each person maintaining health care information must prepare a formal, written statement of the fair information practices observed by such person. Each patient who provides health care information directly to a person maintaining health care information should receive a copy of the statement of the person's fair information practices and should receive an explanation of such fair information practices upon request;

(5) RESTRICTION ON USE FOR OTHER PURPOSES. --Health care information may not be used for any puposes beyond the purposes for which the health care information collected, except as otherwise provided in this [Act];

(6) RIGHT TO ACCESS .--The patient or the patient representative may have access to health care information concerning the patient has the right to have a copy of such health care information made after payment of a reasonable charge, and, futher, has the right to have a notation made with or in such health care information of any amendment

or correction of such health care information requested by the patient or patient representative;

(7) REQUIRED SAFEGUARDS.--Any person maintaining, using or disseminating health care information shall implement reasonable safeguards for the security of the health care information and its storage, processing and transmission, whether in electronic or other form;

(8) ADDITIONAL PROTECTIONS. --Methods to ensure the accuracy, reliability, relevance, completeness and timeliness of health care information should be instituted; and

(9) ADDITIONAL PROTECTIONS FOR CERTAIN HEALTH CARE INFORMATION .--If advisable, provide additional safeguards for highly sensitive health care information (such as health care information concerning mental health, substance abuse, communicable and genetic diseases, and abortions. as well as health care information concerning celebrities and notorious individuals, and health care information contained in adoption records).

SEC. 107. OBLIGATIONS OF PATIENT REPRESENTATIITS.

(a) AUTHORITY OF PATIENT REPRESENTATIVES .--A person authorized to act as a patient representative may exercise the rights of the patient under this [Act] to the extent necessary to effectuate the terms or purposes of the grant of authority; but a patient who is a minor and who is authorized to consent to health care without tie consent of a parent or legal guardian under State law may exclusively exercise the rights of a patient under this [Act] as to information pertaining to health care to which the minor lawfully consented.

(b) GOOD FAITH OBLIGATION.--A patient representative shall act in good faith to represent the best interests of the patient with respect to health care information concerning the patient.

SEC. 108. COMPULSORY DISCLOSURE.

(a) LIMITS ON COMPULSORY DISCLOSURE.--NO person may be compelled to disclose health care information maintained by such person pursuant to a request for compulsory disclosure in any judicial, legislative or administrative proceeding, unless:

(1) The person maintaining the health care information has received a patient's authorization to release the health care information in response to such request for compulsory disclosure;

(2) The patient has knowingly and voluntarily waived the right to claim privilege or confidentiality for the health care information sought;

(3) The patient is a party to the proceeding and has placed his or her physical or mental condition in issue;

(4) The patient's physical or mental condition is relevant to the execution or witnessing of a will;

(5) The physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

(6)Health care information concerning the patient is to be used in the patient's commitment proceeding;

(7) The health care information is for use in any- law enforcement proceeding or investigation in which a health care provider is the subject or a party; provided, however, that health care information so disclosed shall not be used against the patient, unless the matter relates to payment for the patient's health care, or unless compulsory disclosure is ordered as authorized under subparagraph (9);

(8) The health care information is relevant to a proceeding brought under Section 110, 111, or 1 12; or

(9) The court or Federal or State agency or Congress or the State legislature has determined, after hearing any objections made pursuant to paragraph (d), that particular health care information is subject to compulsory disclosure because the party seeking the health care information has demonstrated that the interest that would be served by disclosure outweighs the patient's privacy interest,

(b) NOTICE REQUIREMENT. Unless the court, or Federal or State agency or Congress or State legislature, for good cause shown, determines that the notification should be waived or modified, if health care information is sought under subparagraph (2), (4) or (5), or in a civil proceeding or investigation pursuant to subparagraph (9), the person requesting compulsory disclosure shall serve upon the person maintaining the health care information and upon the patient, the patient's legal guardian or other person legally authorized to act for the patient in such a matter, or on the patient's attorney, the original or a copy of the compulsory disclosure request at least thirty (30) days in advance of the date on which compulsory disclosure is requested and a statement of the right of the patient and of the person maintaining the health care information to have any objections to such compulsory disclosure heard by such court, or governmental agency or Congress or State legislature prior to the issuance of an order for such

compulsory disclosure and the procedure to be followed to have any such objection heard. Such service shall be made by certified mail, return receipt requested, or by hand delivery, in addition to any form of service required by applicable State or Federal law. The notice requirements of this paragraph shall not apply to a request for compulsory disclosure of health care information relating to a patient if made by or on behalf of a patient.

(c) CERTIFICATION UNDER OATH.

(1) A person seeking compulsory disclosure of health care information about a patient under this section shall provide the person maintaining the health care information from whom compulsory disclosure is sought with a written certification under oath by the person seeking such compulsory disclosure or an authorized representative of such person :--

(A) identifying each subparagraph of paragraph (a) under which compulsory disclosure of health care information is being sought; and

(B) stating that notice has been provided in accordance with the requirements of paragraph (b) or is not required by paragraph (b) with respect to any of the health care information sought.

(2) A person may sign a certification described in subparagraph (l), only if the person reasonably believes that the subparagraph or subparagraphs of paragraph (a) identified in the certification provide an appropriate basis for the use of a request for compulsory disclosure.

(d) OBJECTION TO COMPULSORY DISCLOSURE .--If the person maintaining health care information or the patient or the patient's legal guardian or attorney or other person legally authorized to represent the patient in such a matter files in the manner set forth in the notice described in paragraph (b) such person's objection to the request for compulsory disclosure prior to the date on which such compulsory disclosure is sought, the burden shall be on the person requesting such compulsory disclosure to seek an order from the appropriate court or Federal or State agency or State legislature or Congress an order compelling such disclosure, and the person or persons filing such objection may defend in any proceeding to compel such disclosure.

(e) MAINTENANCE OF NOTICE AND CERTIFICATION. Unless otherwise ordered by the court, State or Federal agency, Congress or State legislature, a person maintaining health care information shall maintain a copy of each request for compulsory disclosure and accompanying certification as part of the patient's health care information.

(f) NO WAIVER. --Disclosure of health care information pursuant to compulsory disclosure, in and of itself, shall not constitute a waiver of any privilege, objection, or defense existing under any other law or rule of evidence or procedure.

SEC. 110. CIVIL REMEDIES.

(a) PRIVATE RIGHT OF ACTION. --A person aggrieved by a violation of this [Act] may maintain an action for relief as provided in this section.

(b) JURISDICTION. --The district courts of the United States shall have jurisdiction in any action brought under the provisions of this section.

(c) RELIEF. --The court may order a person maintaining health care information to comply with this [Act] and may order any other appropriate relief.

(d) DAMAGES.--If the court determines that there is a violation of this [Act], the aggrieved person is entitled to recover damages for any losses sustained as a result of the violation; and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of [$ 10,000], exclusive of any loss.

(e) ATTORNEYS' FEES.--If a plaintiff prevails in an action brought under this section, the court, in addition to any other relief granted under this section, may award the plaintiff reasonable attorneys' fees and all other expenses incurred by the plaintiff in the litigation.

(f) STATUTE OF LIMITATIONS .--Any action under this [Act] must be brought within two years from the date the alleged violation is discovered.

SEC. 111. CIVIL MONEY PENALTIES.

(a) Any person that knowingly discloses or health care information in violation of this [Act] shall be subject, in addition to any other penalties that maybe prescribed by law--

(1) to a civil money penalty of not more than [$1 ,000] for each violation, but not to exceed [$25,000] in the aggregate for multiple violations, except as provided in subparagraph (2); and, in addition--

(2) to a civil money penalty of not more than [$1,000,000] if the Secretary finds that violations of this [Act] have occurred in such numbers or with such frequency as to constitute a general business practice.

SEC. 112. CRIMINAL PENALTY FOR OBTAINING HEALTH CARE INFORMATION THROUGH FALSE PRETENSES OR THEFT.

(a) Any person who, under false or fraudulent pretenses or with a false or fraudulent certification required under this [Act], requests or obtains health care information from a person maintaining health care information or a patient's authorization shall be fined not more than $10,000 or imprisoned not more than six months, or both, for each offense.

(b) Anv person who, under false or fraudulent pretenses or with a false or fraudulent certification required under this [Act], requests or obtains health care information from a person maintaining health care information and who intentionally uses, sells or transfers such health care information for remuneration, for profit or for monetary gain shall be fined not more than $50,000, or imprisoned for not more than two years, or both, for each offense.

(c) Any person who unlawfully takes health care information from a person maintaining health care information and who intentionally uses, sells or transfers such health care information for remuneration, for profit or for monetary gain shall be fined not more than $50,000, or imprisoned for not more than two years, or both, for each offense.

SEC. 113. PREEMPTION OF STATE LAWS.

(a) Effective as of the effective date of this [Act], no State may establish or enforce any law or regulation concerning the disclosure of health care information, except as provided in paragraph (b).

(b) This [Act] does not supersede any restriction on the disclosure or use of health care information under: --

(1) any Federal, or State law on the inspection of, or disclosure or use of health care information relating to alcohol or drug abuse, or health care for such abuse;

(2) any Federal,, or State law concerning the disclosure or use of health care information relating to psychiatric, psychological, mental health or developmental disabilities health care;

(3) Section 1106 of the Social Security Act;

(4) Section 1160 of the Social Security Act; or

(5) any Federal or State law making information. including but not limited to health care information, that is maintained, used or generated in the course of

peer review, quality assurance, or similar activities or functions privileged or confidential.

(c) Nothing in this [Act] shall be construed to make any Federal Government authority or any Federal agency subject to any State or local law not otherwise applicable.

SEC. 114. MISCELLANEOUS PROVISIONS.

(a) SEVERABILITY.--If any provision of this [Act] or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this [Act] that can be given effect without the invalid provision or application, and to this end the provisions of this [Act] are severable.