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HOUSE BILL 829

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Dani ce R. Pi craux

FOR THE LEGISLATIVE HEALTH SUBCOMMITTEE

AN ACT

**RELATING TO HEALTH INFORMATION; LIMITING USE AND DISCLOSURE OF
HEALTH INFORMATION; PROVIDING PERSONAL RIGHTS; REQUIRING
INFORMATION SAFEGUARDS; ESTABLISHING CIVIL AND CRIMINAL
PENALTIES; ENACTING SECTIONS OF THE NMSA 1978.**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

**Section 1. SHORT TITLE.--This act may be cited as the
"Health Information Privacy Act".**

**Section 2. DEFINITIONS.--As used in the Health
Information Privacy Act:**

**A. "disclose" means to release, transmit, publish,
make available or otherwise divulge protected health
information;**

B. "electronically maintain" means to store

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1 information on a computer or other electronic media from which
2 information may be electronically retrieved;

3 C. "electronically transmit" means to disclose
4 information using a computer or other electronic media;

5 D. "health care payer" means a person that provides
6 or pays all or part of the cost of health care services,
7 including a government agency that administers a health care
8 services program, but does not mean a person, or a family
9 member or friend of that person, who pays for his health care
10 services;

11 E. "health care provider" means a person that is
12 licensed or otherwise authorized by the state to furnish health
13 care services and receives, obtains, creates, uses, maintains
14 or discloses health information;

15 F. "health care operations" means the activities
16 undertaken by or on behalf of a health care provider, health
17 care payer or health information manager for management or
18 support of health care services or payment;

19 G. "health care services" means services or
20 supplies provided by a health care provider for the prevention,
21 diagnosis, services, rehabilitation, maintenance, cure or
22 relief of a health condition, illness, injury, disability or
23 disease, including physical, mental and behavioral health and
24 the procuring, storing or administration of blood, genetic
25 materials or tissue;

1 H. "health information" means information, whether
2 oral, written, electronic, visual, pictorial, physical or in
3 any other form or medium, that relates to the past, present or
4 future:

5 (1) physical, mental or behavioral health
6 status or condition of a person, including substance abuse;

7 (2) provision of health care services to the
8 person; or

9 (3) payment for the provision of health care
10 services for the person;

11 I. "health information manager" means a health care
12 provider, health care payer, health care clearinghouse, third-
13 party administrator of health care benefits, researcher,
14 employer, school or educational institution, financial
15 institution, labor union, government agency or other person
16 that:

17 (1) receives, obtains, creates, uses,
18 maintains or discloses health information;

19 (2) facilitates the electronic transmission of
20 health information between or among health information
21 managers;

22 (3) processes or facilitates the processing of
23 health information into a standard format for electronic
24 transmission between or among health information managers; or

25 (4) transforms protected health information

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1 into non-personally identifiable health information;

2 J. "health oversight agency" means a government
3 agency or an authorized contractor that performs or oversees
4 the performance of an audit, investigation, inspection,
5 licensure or disciplinary, administrative or other proceeding;

6 K. "personal representative" means:

7 (1) a person legally authorized to make a
8 health care decision for another person pursuant to the Uniform
9 Health-Care Decisions Act;

10 (2) the administrator or executor of a
11 decedent's estate; or

12 (3) a person authorized by law to act on
13 behalf of a decedent;

14 L. "protected health information" means health
15 information that reveals, or could reasonably be foreseen to
16 reveal, the identity of the person whose health care is the
17 subject of the health information;

18 M. "public health agency" means a government agency
19 or an authorized contractor that is responsible for activities
20 primarily aimed at the prevention of injury, disease,
21 disability or premature mortality or the promotion of health in
22 the community, development of public health policy, response to
23 public health needs and emergencies and the collection of data
24 on disease, injury and vital events such as birth or death; and

25 N. "security standard" means a requirement,

1 guideline or best practice designed to protect data privacy,
2 integrity or availability.

3 Section 3. GENERAL PROVISIONS ON USE AND DISCLOSURE OF
4 PROTECTED HEALTH INFORMATION. --

5 A. No health information manager shall use or
6 disclose protected health information unless authorized
7 pursuant to the Health Information Privacy Act or as otherwise
8 required by law.

9 B. A health information manager may use or disclose
10 protected health information:

11 (1) to provide health care services to the
12 person whose health care is the subject of the information;

13 (2) to pay for the provision of health care
14 services to the person whose health care is the subject of the
15 information;

16 (3) for health care operations; and

17 (4) as otherwise authorized pursuant to the
18 Health Information Privacy Act.

19 C. Permitted or required use or disclosure of
20 protected health information by a health information manager
21 shall be:

22 (1) directly related to the purpose for which
23 the use or disclosure of the protected health information is
24 permitted or required;

25 (2) limited to the minimum amount of protected

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1 health information necessary to accomplish the intended
2 purpose, to the extent reasonably practical; and

3 (3) restricted to situations where use of non-
4 protected health information is not a reasonable alternative.

5 D. Except as required by law, nothing in the Health
6 Information Privacy Act shall be construed to require the
7 disclosure of protected health information.

8 E. Nothing in the Health Information Privacy Act
9 shall be construed to prevent a person from using or disclosing
10 his protected health information in an otherwise lawful manner.

11 F. A health information manager shall comply with
12 the provisions of the Health Information Privacy Act for a
13 decedent's protected health information for two years following
14 the death of the person, except as required for law enforcement
15 activities or judicial proceedings.

16 G. A personal representative may exercise the
17 rights of the person represented pursuant to the Health
18 Information Privacy Act. If the person is a minor and is
19 authorized by law to consent to health care services without
20 parental consent, only the minor may exercise the rights of a
21 person pursuant to the Health Information Privacy Act regarding
22 the protected health information that relates to the health
23 care services for which the minor lawfully consented.

24 Section 4. DISCLOSURE HISTORY. --

25 A. A health information manager shall maintain a

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1 record of all disclosures of protected health information made
2 by the health information manager, provided that:

3 (1) disclosures for the provision of health
4 care services, health care payment or health care operations
5 need not be recorded if the disclosure is confined to
6 recipients within the health-related divisions of the health
7 information manager;

8 (2) disclosures made in accordance with a law
9 that requires reporting of health information to a government
10 agency need not be recorded; and

11 (3) a health care manager shall be exempt from
12 maintaining a record of disclosures made for the provision of
13 health care services or health care payment. B. A
14 person shall be permitted to see the record of disclosures of
15 his protected health information, except for disclosures
16 prohibited, restricted or limited by court order.

17 C. The record of disclosures shall be retained for
18 the life of the record to which it relates.

19 Section 5. USE AND DISCLOSURE OF PROTECTED HEALTH
20 INFORMATION WITHOUT PERSONAL AUTHORIZATION. --

21 A. A health information manager may use or disclose
22 protected health information without a person's authorization
23 when necessary for providing health care services, health care
24 payment or health care operations; provided that the use or
25 disclosure shall be limited to the information necessary to

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1 provide health care services.

2 B. A health information manager may disclose
3 protected health information without a person's authorization
4 to a health oversight agency for authorized oversight
5 activities.

6 C. A health information manager may disclose
7 protected health information without a person's authorization
8 to a government agency or a government agency contractor for
9 inclusion in a governmental health data system that collects
10 and analyzes health data for authorized policy, planning,
11 regulation or management.

12 D. A health information manager may disclose
13 protected health information without the person's authorization
14 to a court or a law enforcement official if the disclosure is
15 authorized by law or pursuant to a warrant, subpoena or order
16 issued by a judge.

17 E. A health information manager may disclose
18 protected health information concerning a decedent without his
19 personal representative's authorization to a medical
20 investigator or examiner to identify the decedent or determine
21 a cause of death.

22 Section 6. USE AND DISCLOSURE OF PROTECTED HEALTH
23 INFORMATION WITH A PERSON'S AUTHORIZATION. --

24 A. A health information manager shall request and
25 obtain authorization from a person for all uses and disclosures

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1 of the person's protected health information that are:

2 (1) not directly related to the provision of
3 health care services to the person, payment for the provision
4 of health care services to the person or health care
5 operations;

6 (2) to a health care provider or health plan,
7 prior to a person's enrollment in a health plan, for the
8 purpose of making eligibility or enrollment determinations
9 relating to the person or for underwriting or risk rating
10 determinations; or

11 (3) to an employer for use in employment
12 determinations.

13 B. A person may request and authorize a health
14 information manager to disclose his protected health
15 information. The health information manager shall honor the
16 request and authorization.

17 C. A person may revoke or amend an authorization to
18 disclose protected health information at any time, except to
19 the extent that the health information manager has taken action
20 in reliance on the authorization.

21 D. A health information manager shall not condition
22 the provision of health care services to a person or payment
23 for health care services on a person's authorization of use or
24 disclosure of protected health information, except where the
25 authorization is requested in connection with the person's

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1 voluntary participation in a clinical research trial.

2 E. A person's authorization to use or disclose protected
3 health information shall:

4 (1) be on a document other than that for which
5 the person consents to health care services;

6 (2) be in writing, dated and signed by the
7 person; and

8 (3) include a description of the information
9 to be disclosed, the identity of the intended recipient, the
10 date or event by which the authorization expires and a
11 statement that the person has the right to revoke or amend the
12 authorization.

13 F. A health information manager that requests a
14 person to authorize use or disclosure of protected health
15 information shall provide a copy of the authorization to the
16 person. A health information manager that discloses protected
17 health information pursuant to a person's authorization shall
18 keep a copy of the authorization, or revocation or amendment of
19 authorization, and a record of the disclosure.

20 Section 7. PERSONAL ACCESS TO PROTECTED HEALTH
21 INFORMATION. --

22 A. A health information manager shall permit a
23 person to inspect, access or copy in a timely manner his
24 protected health information, except as provided in Subsection
25 B of this section.

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B. A health information manager may deny a person's request to inspect and copy the person's protected health information if the disclosure is prohibited by law or court order.

C. A denial of a person's request to inspect and copy the person's protected health information shall be limited to the minimum amount of protected health information necessary to effectuate the reason for the denial, and the person shall be permitted to inspect and obtain a copy of any portion of the requested information not subject to the denial.

D. A health information manager shall provide protected health information pursuant to the person's request and authorization for disclosure at no cost for one retrieval or copy of the protected health information in a twelve-month period.

Section 8. CORRECTION OR AMENDMENT OF PROTECTED HEALTH INFORMATION. --For purposes of accuracy or completeness, a person, health care provider or health care payer may request a health information manager to correct or amend a person's protected health information held by the health information manager. Upon written request from a person, as promptly as required under the circumstances but no later than thirty days after receiving the request, the health information manager shall make the correction or amendment. The person may correct his name, address, phone number or other non-health related

1 information, but any information related to health care
2 services shall become an amendment to the protected health
3 information. The original health information shall not be
4 corrected unless the health care provider who rendered the
5 health care services authorizes the corrections.

6 Section 9. NOTICE OF INFORMATION PRACTICES. --

7 A. A health information manager shall prepare a
8 written notice in plain language to inform persons of the
9 health information manager's information practices and persons'
10 rights regarding protected health information, including:

11 (1) the uses and disclosures of protected
12 health information authorized by the Health Information Privacy
13 Act;

14 (2) the right of the person to prevent or
15 limit disclosure of protected health information as provided in
16 the Health Information Privacy Act;

17 (3) the right of the person to access, inspect
18 or copy protected health information and to request corrections
19 or amendments;

20 (4) the procedures for authorizing disclosure
21 and for revoking authorization for disclosure of protected
22 health information;

23 (5) the procedures for the exercise and
24 redress of rights under the Health Information Privacy Act; and

25 (6) the availability of a copy at no charge in

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1 a twelve-month period and subsequent reasonable fees, if any,
2 for inspection, copying, distribution or provision of protected
3 health information.

4 B. A health information manager shall:

5 (1) provide a copy of the written notice to a
6 person at the first health care service delivery after the
7 effective date of the Health Information Privacy Act; and

8 (2) post a copy of the notice in a conspicuous
9 location.

10 C. A health care payer shall include in the notice
11 an explanation of the information required in Subsection A of
12 this section, as consistent with the provisions of the Patient
13 Protection Act, to newly enrolled or covered persons or when
14 enrollment or coverage occurs.

15 Section 10. INFORMATION SAFEGUARDS. --

16 A. A health information manager shall establish and
17 maintain reasonable and appropriate administrative, technical
18 and physical safeguards to:

19 (1) ensure the confidentiality, security,
20 accuracy and integrity of protected health information in its
21 possession;

22 (2) protect against reasonably anticipated
23 threats or hazards to the security or integrity of protected
24 health information in its possession; and

25 (3) protect against unauthorized use or

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1 disclosure of protected health information in its possession.

2 B. A health information manager shall periodically
3 assess potential risks and vulnerabilities to the protected
4 health information in its possession and implement, maintain
5 and document security measures necessary to ensure the privacy
6 of the protected health information as required by the Health
7 Information Privacy Act.

8 C. A health information manager shall implement,
9 maintain and document the security standards for all protected
10 health information that the health information manager
11 electronically maintains or transmits.

12 Section 11. AUTHORITY OF THE DEPARTMENT OF HEALTH. --

13 A. The department of health shall establish
14 administrative procedures for addressing complaints from
15 persons concerning the use or disclosure of their protected
16 health information by a health information manager or their
17 rights under the provisions of the Health Information Privacy
18 Act.

19 B. The department of health shall develop and
20 promulgate security standards to protect the confidentiality,
21 integrity and availability of protected health information that
22 is electronically maintained or electronically transmitted.

23 C. The security standards shall comply with state
24 and federal information security standards, including:

- 25 (1) administrative procedures to manage the

1 implementation of security measures and the conduct of
2 personnel in relation to the protection of data;

3 (2) physical safeguards to protect computer
4 systems and related equipment and buildings from intrusion,
5 fire and other natural and environmental hazards;

6 (3) technical security services to protect
7 information and control authorized access to information; and

8 (4) technical security mechanisms to guard
9 against unauthorized access to data that is transmitted over a
10 communications network.

11 D. The department of health shall establish an
12 advisory committee to assist it in developing and periodically
13 reviewing health data security standards. The advisory
14 committee shall consist of representatives of public and
15 private health information managers, state agencies that
16 electronically maintain or electronically transmit protected
17 health information, consumers and professionals with expertise
18 in areas such as information systems and data security. The
19 advisory committee shall make recommendations to the department
20 of health on:

21 (1) appropriate security standards for
22 protected health information that is electronically maintained
23 or electronically transmitted;

24 (2) implementation of security standards,
25 including time requirements and phase-in options, if any; and

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(3) review and revision of security standards.

E. The department of health shall promulgate rules to implement the provisions of the Health Information Privacy Act.

F. The department of health shall:

(1) independently monitor compliance with the information safeguards and security standards of the Health Information Privacy Act;

(2) inspect documentation of security standards and require additional documentation;

(3) inspect a health information manager's data systems and premises;

(4) receive reports of violations of the information safeguards and security standards of the Health Information Privacy Act; and

(5) order corrective measures.

Section 12. CIVIL PENALTIES. --

A. The attorney general or district attorney may bring a civil action against a health information manager for violating the provisions of the Health Information Privacy Act or to otherwise enforce those provisions.

B. A person whose protected health information has been wrongfully used or disclosed or whose rights under the provisions of the Health Information Privacy Act have been

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1 violated may bring a civil action against a health information
2 manager for damages or other relief.

3 C. The court may order a health information manager
4 who violates the provisions of the Health Information Privacy
5 Act to comply with those provisions and may order other
6 appropriate relief, including:

7 (1) damages for economic and non-economic
8 loss;

9 (2) damages of up to five thousand dollars
10 (\$5,000) per violation in addition to any economic and non-
11 economic loss if the violation results from willful or grossly
12 negligent conduct;

13 (3) a civil penalty of not more than five
14 thousand dollars (\$5,000) per violation if the violation
15 results from willful or grossly negligent conduct; and

16 (4) reasonable attorney fees and appropriate
17 court costs.

18 D. In an action by a person alleging that protected
19 health information was improperly withheld from the person, the
20 burden of proof is on the health information manager to prove
21 that the information was properly withheld.

22 E. A health information manager that discloses
23 protected health information pursuant to a person's
24 authorization that has been revoked or amended shall not be
25 subject to liability or penalty under the Health Information

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1 Privacy Act if the health information manager had no actual or
2 constructive notice of the revocation or amendment at the time
3 the information was disclosed.

4 F. A court may use protected health information to
5 determine the cause of damage or injury and award appropriate
6 relief.

7 G. Each instance of wrongful use or disclosure of
8 protected health information or wrongful denial of a person's
9 rights under the provisions of the Health Information Privacy
10 Act constitutes a separate and actionable violation of the
11 Health Information Privacy Act.

12 H. Nothing in the Health Information Privacy Act
13 shall be construed to affect the rights and remedies available
14 to a person under other law.

15 Section 13. CRIMINAL PENALTIES. --

16 A. A health information manager who knowingly uses
17 or discloses protected health information in violation of the
18 Health Information Privacy Act is guilty of a misdemeanor and
19 shall be punished by a fine of not more than five thousand
20 dollars (\$5,000) or imprisonment for a definite term not to
21 exceed one year, or both.

22 B. A health information manager who knowingly uses
23 or discloses protected health information under false pretenses
24 or with the intent to sell or transfer the information for
25 commercial advantage, personal gain or malicious harm in

1 violation of the Health Information Privacy Act is guilty of a
2 fourth degree felony and shall be punished by a fine of not
3 more than five thousand dollars (\$5,000) or imprisonment for a
4 definite term not to exceed eighteen months, or both.

5 Section 14. EFFECT ON OTHER STATE LAWS. --

6 A. Nothing in the Health Information Privacy Act
7 shall be construed to invalidate or limit the authority, power
8 or procedures established under any law providing for:

9 (1) reporting of disease or injury, abuse or
10 neglect, or birth, death or other vital events;

11 (2) public health investigation or
12 intervention; or

13 (3) a governmental health data system that
14 collects and analyzes health data for policy, planning,
15 regulatory or management functions authorized by law.

16 B. The provisions of the Health Information Privacy
17 Act shall prevail over any other contrary provision of state
18 law, except that a contrary provision of state law shall
19 prevail over a provision of the Health Information Privacy Act
20 if with respect to personally identifiable health information
21 the contrary provision of state law requires:

22 (1) more limited use or disclosure of the
23 information;

24 (2) greater rights for persons to access or
25 amend their information;

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1 (3) greater penalties for unlawful use or
2 disclosure of the information;

3 (4) a more detailed explanation to be provided
4 to a person about a proposed use or disclosure of information,
5 the rights of the person, the availability of remedies or
6 similar issues;

7 (5) a narrower scope or shorter duration of a
8 person's authorization for use or disclosure of information, or
9 procedures that increase the difficulty of obtaining a person's
10 authorization or reduce the coercive effect of the
11 circumstances surrounding the authorization;

12 (6) the retention or reporting of more
13 detailed information or for a longer duration; or

14 (7) greater privacy protection for the person
15 with respect to any other related matter.

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