

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 676

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

INTRODUCED BY

Manny M Aragon

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
information on a computer or other electronic media from which

underscored material = new
[bracketed material] = delete

underscored material = new
[bracketed material] = delete

1 information may be electronically retrieved;

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

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

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

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

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

25 H. "health information" means information, whether

underscored material = new
[bracketed material] = delete

1 oral, written, electronic, visual, pictorial, physical or in
2 any other form or medium, that relates to the past, present or
3 future:

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

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

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

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

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

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

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

24 (4) transforms protected health information
25 into non-personally identifiable health information;

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

5 K. "personal representative" means:

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

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

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

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

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

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

1 Section 4. DISCLOSURE HISTORY. --

2 A. A health information manager shall maintain a
3 record of all disclosures of protected health information made
4 by the health information manager, provided that:

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

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

13 (3) a health care manager shall be exempt
14 from maintaining a record of disclosures made for the
15 provision of health care services or health care payment.

16 B. A person shall be permitted to see the record
17 of disclosures of his protected health information, except for
18 disclosures prohibited, restricted or limited by court order.

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

21 Section 5. USE AND DISCLOSURE OF PROTECTED HEALTH
22 INFORMATION WITHOUT PERSONAL AUTHORIZATION. --

23 A. A health information manager may use or
24 disclose protected health information without a person's
25 authorization when necessary for providing health care

underscored material = new
[bracketed material] = delete

1 services, health care payment or health care operations;
2 provided that the use or disclosure shall be limited to the
3 information necessary to provide health care services.

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

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

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

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

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

. 135469. 1

1 A. A health information manager shall request and
2 obtain authorization from a person for all uses and
3 disclosures of the person's protected health information that
4 are:

5 (1) not directly related to the provision of
6 health care services to the person, payment for the provision
7 of health care services to the person or health care
8 operations;

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

14 (3) to an employer for use in employment
15 determinations.

16 B. A person may request and authorize a health
17 information manager to disclose his protected health
18 information. The health information manager shall honor the
19 request and authorization.

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

24 D. A health information manager shall not
25 condition the provision of health care services to a person or

underscored material = new
[bracketed material] = delete

1 payment for health care services on a person's authorization
2 of use or disclosure of protected health information, except
3 where the authorization is requested in connection with the
4 person's voluntary participation in a clinical research trial.

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

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

9 (2) be in writing, dated and signed by the
10 person; and

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

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

23 Section 7. PERSONAL ACCESS TO PROTECTED HEALTH
24 INFORMATION. --

25 A. A health information manager shall permit a

. 135469. 1

underscored material = new
[bracketed material] = delete

1 person to inspect, access or copy in a timely manner his
2 protected health information, except as provided in Subsection
3 B of this section.

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

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

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

20 Section 8. CORRECTION OR AMENDMENT OF PROTECTED HEALTH
21 INFORMATION. --For purposes of accuracy or completeness, a
22 person, health care provider or health care payer may request
23 a health information manager to correct or amend a person's
24 protected health information held by the health information
25 manager. Upon written request from a person, as promptly as

. 135469. 1

underscored material = new
[bracketed material] = delete

1 required under the circumstances but no later than thirty days
2 after receiving the request, the health information manager
3 shall make the correction or amendment. The person may
4 correct his name, address, phone number or other non-health
5 related information, but any information related to health
6 care services shall become an amendment to the protected
7 health information. The original health information shall not
8 be corrected unless the health care provider who rendered the
9 health care services authorizes the corrections.

10 Section 9. NOTICE OF INFORMATION PRACTICES. --

11 A. A health information manager shall prepare a
12 written notice in plain language to inform persons of the
13 health information manager's information practices and
14 persons' rights regarding protected health information,
15 including:

16 (1) the uses and disclosures of protected
17 health information authorized by the Health Information
18 Privacy Act;

19 (2) the right of the person to prevent or
20 limit disclosure of protected health information as provided
21 in the Health Information Privacy Act;

22 (3) the right of the person to access,
23 inspect or copy protected health information and to request
24 corrections or amendments;

25 (4) the procedures for authorizing disclosure

underscored material = new
[bracketed material] = delete

1 and for revoking authorization for disclosure of protected
2 health information;

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

6 (6) the availability of a copy at no charge
7 in a twelve-month period and subsequent reasonable fees, if
8 any, for inspection, copying, distribution or provision of
9 protected health information.

10 B. A health information manager shall:

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

14 (2) post a copy of the notice in a
15 conspicuous location.

16 C. A health care payer shall include in the notice
17 an explanation of the information required in Subsection A of
18 this section, as consistent with the provisions of the Patient
19 Protection Act, to newly enrolled or covered persons or when
20 enrollment or coverage occurs.

21 Section 10. INFORMATION SAFEGUARDS. --

22 A. A health information manager shall establish
23 and maintain reasonable and appropriate administrative,
24 technical and physical safeguards to:

25 (1) ensure the confidentiality, security,

underscored material = new
[bracketed material] = delete

1 accuracy and integrity of protected health information in its
2 possession;

3 (2) protect against reasonably anticipated
4 threats or hazards to the security or integrity of protected
5 health information in its possession; and

6 (3) protect against unauthorized use or
7 disclosure of protected health information in its possession.

8 B. A health information manager shall periodically
9 assess potential risks and vulnerabilities to the protected
10 health information in its possession and implement, maintain
11 and document security measures necessary to ensure the privacy
12 of the protected health information as required by the Health
13 Information Privacy Act.

14 C. A health information manager shall implement,
15 maintain and document the security standards for all protected
16 health information that the health information manager
17 electronically maintains or transmits.

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

19 A. The department of health shall establish
20 administrative procedures for addressing complaints from
21 persons concerning the use or disclosure of their protected
22 health information by a health information manager or their
23 rights under the provisions of the Health Information Privacy
24 Act.

25 B. The department of health shall develop and

underscored material = new
[bracketed material] = delete

1 promulgate security standards to protect the confidentiality,
2 integrity and availability of protected health information
3 that is electronically maintained or electronically
4 transmitted.

5 C. The security standards shall comply with state
6 and federal information security standards, including:

7 (1) administrative procedures to manage the
8 implementation of security measures and the conduct of
9 personnel in relation to the protection of data;

10 (2) physical safeguards to protect computer
11 systems and related equipment and buildings from intrusion,
12 fire and other natural and environmental hazards;

13 (3) technical security services to protect
14 information and control authorized access to information; and

15 (4) technical security mechanisms to guard
16 against unauthorized access to data that is transmitted over a
17 communications network.

18 D. The department of health shall establish an
19 advisory committee to assist it in developing and periodically
20 reviewing health data security standards. The advisory
21 committee shall consist of representatives of public and
22 private health information managers, state agencies that
23 electronically maintain or electronically transmit protected
24 health information, consumers and professionals with expertise
25 in areas such as information systems and data security. The

. 135469. 1

underscored material = new
[bracketed material] = delete

1 advisory committee shall make recommendations to the
2 department of health on:

3 (1) appropriate security standards for
4 protected health information that is electronically maintained
5 or electronically transmitted;

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

8 (3) review and revision of security
9 standards.

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

13 F. The department of health shall:

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

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

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

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

24 (5) order corrective measures.

25 Section 12. CIVIL PENALTIES. --

. 135469. 1

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

5 B. A person whose protected health information has
6 been wrongfully used or disclosed or whose rights under the
7 provisions of the Health Information Privacy Act have been
8 violated may bring a civil action against a health information
9 manager for damages or other relief.

10 C. The court may order a health information
11 manager who violates the provisions of the Health Information
12 Privacy Act to comply with those provisions and may order
13 other appropriate relief, including:

14 (1) damages for economic and non-economic
15 loss;

16 (2) damages of up to five thousand dollars
17 (\$5,000) per violation in addition to any economic and non-
18 economic loss if the violation results from willful or grossly
19 negligent conduct;

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

23 (4) reasonable attorney fees and appropriate
24 court costs.

25 D. In an action by a person alleging that

underscored material = new
[bracketed material] = delete

1 protected health information was improperly withheld from the
2 person, the burden of proof is on the health information
3 manager to prove that the information was properly withheld.

4 E. A health information manager that discloses
5 protected health information pursuant to a person's
6 authorization that has been revoked or amended shall not be
7 subject to liability or penalty under the Health Information
8 Privacy Act if the health information manager had no actual or
9 constructive notice of the revocation or amendment at the time
10 the information was disclosed.

11 F. A court may use protected health information to
12 determine the cause of damage or injury and award appropriate
13 relief.

14 G. Each instance of wrongful use or disclosure of
15 protected health information or wrongful denial of a person's
16 rights under the provisions of the Health Information Privacy
17 Act constitutes a separate and actionable violation of the
18 Health Information Privacy Act.

19 H. Nothing in the Health Information Privacy Act
20 shall be construed to affect the rights and remedies available
21 to a person under other law.

22 Section 13. CRIMINAL PENALTIES. --

23 A. A health information manager who knowingly uses
24 or discloses protected health information in violation of the
25 Health Information Privacy Act is guilty of a misdemeanor and

. 135469. 1

underscored material = new
[bracketed material] = delete

1 shall be punished by a fine of not more than five thousand
2 dollars (\$5,000) or imprisonment for a definite term not to
3 exceed one year, or both.

4 B. A health information manager who knowingly uses
5 or discloses protected health information under false
6 pretenses or with the intent to sell or transfer the
7 information for commercial advantage, personal gain or
8 malicious harm in violation of the Health Information Privacy
9 Act is guilty of a fourth degree felony and shall be punished
10 by a fine of not more than five thousand dollars (\$5,000) or
11 imprisonment for a definite term not to exceed eighteen
12 months, or both.

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

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

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

19 (2) public health investigation or
20 intervention; or

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

24 B. The provisions of the Health Information
25 Privacy Act shall prevail over any other contrary provision of

1 state law, except that a contrary provision of state law shall
2 prevail over a provision of the Health Information Privacy Act
3 if with respect to personally identifiable health information
4 the contrary provision of state law requires:

5 (1) more limited use or disclosure of the
6 information;

7 (2) greater rights for persons to access or
8 amend their information;

9 (3) greater penalties for unlawful use or
10 disclosure of the information;

11 (4) a more detailed explanation to be
12 provided to a person about a proposed use or disclosure of
13 information, the rights of the person, the availability of
14 remedies or similar issues;

15 (5) a narrower scope or shorter duration of a
16 person's authorization for use or disclosure of information,
17 or procedures that increase the difficulty of obtaining a
18 person's authorization or reduce the coercive effect of the
19 circumstances surrounding the authorization;

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

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