

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR
SENATE BILL 676

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

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 and Privacy Act".

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

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

B. "health care payer" means a person that
provides or pays all or part of the cost of health care

1 services, including a government agency that administers a
2 health care services program, but does not mean a person, or a
3 family member or friend of that person, who pays for his
4 health care services;

5 C. "health care provider" means a person that is
6 licensed or otherwise authorized by the state to furnish
7 health care services and receives, obtains, creates, uses,
8 maintains or discloses health information;

9 D. "health care services" means services or
10 supplies provided by a health care provider for the
11 prevention, diagnosis, services, rehabilitation, maintenance,
12 cure or relief of a health condition, illness, injury,
13 disability or disease, including physical, mental and
14 behavioral health and the procuring, storing or administration
15 of blood, genetic materials or tissue;

16 E. "health information" means information, whether
17 oral, written, electronic, visual, pictorial, physical or in
18 any other form or medium, that relates to the past, present or
19 future:

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

22 (2) provision of health care services to the
23 person; or

24 (3) payment for the provision of health care
25 services for the person;

1 F. "health information manager" means a health
2 care provider, health care payer, health care clearinghouse,
3 third-party administrator of health care benefits,
4 researcher, employer, school or educational institution,
5 financial institution, labor union, government agency or other
6 person that:

7 (1) receives, obtains, creates, uses,
8 maintains or discloses health information in the normal course
9 of business;

10 (2) facilitates the electronic transmission
11 of health information between or among health information
12 managers;

13 (3) processes or facilitates the processing
14 of health information into a standard format for electronic
15 transmission between or among health information managers; or

16 (4) transforms protected health information
17 into non-personally identifiable health information; and

18 G. "protected health information" means health
19 information that reveals, or could reasonably be foreseen to
20 reveal, the identity of the person whose health care is the
21 subject of the health information.

22 Section 3. PROTECTION OF HEALTH DATA AND INFORMATION. --
23 Health information managers, except as provided for in Section
24 7 of the Health Information and Privacy Act, shall comply with
25 the privacy requirements of Part C of Title 11 of the Social

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underscored material = new
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1 Security Act and Section 264 of Part C of Subtitle F of Title
2 of the Health Insurance Portability and Accountability Act
3 of 1996.

4 Section 4. INFORMATION SAFEGUARDS. --

5 A. A health information manager shall establish
6 and maintain reasonable and appropriate administrative,
7 technical and physical safeguards to:

8 (1) ensure the confidentiality, security,
9 accuracy and integrity of protected health information in its
10 possession;

11 (2) protect against reasonably anticipated
12 threats or hazards to the security or integrity of protected
13 health information in its possession; and

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

16 B. A health information manager shall periodically
17 assess potential risks and vulnerabilities to the protected
18 health information in its possession and implement, maintain
19 and document security measures necessary to ensure the privacy
20 of the protected health information as required by the Health
21 Information and Privacy Act.

22 C. A health information manager shall implement,
23 maintain and document the security standards for all protected
24 health information that the health information manager
25 electronically maintains or transmits.

1 Section 5. CIVIL PENALTIES. --

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

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

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

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

17 (2) damages of up to three times the amount
18 of economic and non-economic damages per violation in addition
19 to any economic and non-economic loss if the violation results
20 from willful or grossly negligent conduct;

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

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

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1 D. In an action by a person alleging that
2 protected health information was improperly withheld from the
3 person, the burden of proof is on the health information
4 manager to prove that the information was properly withheld.

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

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

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

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

23 Section 6. CRIMINAL PENALTIES. --

24 A. A health information manager who knowingly uses
25 or discloses protected health information in violation of the

1 Health Information and Privacy Act is guilty of a misdemeanor
2 and shall be punished by a fine of not more than one thousand
3 dollars (\$1,000) or imprisonment for a definite term not to
4 exceed one year, or both.

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

14 Section 7. EFFECT ON OTHER STATE LAWS. --

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

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

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

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

25 B. The provisions of the Health Information and

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

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

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

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

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

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

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

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

25 Section 8. EFFECTIVE DATE. --The effective date of the

1 provisions of this act is June 30, 2003.

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