

SENATE BILL NO. 281

BY SENATOR JOHNS

1 AN ACT

2 To amend and reenact R.S. 22:42.1 and 43(A) and (B), relative to confidentiality of records
3 in the custody of the Department of Insurance; to provide with respect to disclosure
4 of categorical descriptors relative to complaints filed against all persons and entities
5 subject to the jurisdiction of the department; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 22:42.1 and 43(A) and (B) are hereby amended and reenacted to read
8 as follows:

9 §42.1. Confidentiality of ~~health~~ information; exceptions

10 A. Notwithstanding the provisions of Subsections B and C of this Section,
11 the commissioner shall comply with the provisions of R.S. 22:43; however, no
12 identifier listed in Subsection E of this Section of any of the following persons
13 shall be part of the separate file, record, or report required pursuant to R.S.
14 22:43 when recording information about any complaint or the compilation of
15 statistical data:

16 (1) The individual who is the subject of any health information, health
17 information record, or the working papers, recorded information, documents,
18 or copies thereof or related thereto.

19 (2) Anyone identified as, or who it is reasonable to believe is, a relative,
20 employer, or household member of the individual who is described in
21 Paragraph (1) of this Subsection, where the relative, employer, or household
22 member is listed in any record described in Paragraph (1) of this Subsection.

23 B.(1) All ~~protected~~ health information in the custody of the Department of
24 Insurance shall be confidential and ~~privileged, shall not be subject to disclosure~~
25 under Title 44 of the Louisiana Revised Statutes of 1950, and shall not be subject to
26 subpoena. Confidentiality and privilege shall be strictly maintained by the
27 commissioner of insurance and all employees of the department, except as provided

1 in Subsection B of this Section, and the protected health information shall be used
 2 exclusively for the purpose of discharging the duties and responsibilities of the
 3 department under this Title. No part of any health information, health
 4 information record, or the working papers, recorded information, documents,
 5 or copies thereof or related thereto, produced by, obtained by, or disclosed to
 6 the commissioner, or any other person, and in the custody of the commissioner
 7 shall be disclosed under Title 44 of the Louisiana Revised Statutes of 1950.

8 (2) "Protected health ~~Health~~ information" as used in this Section means
 9 either of the following: any information in any form or medium, transmitted or
 10 maintained in any manner, and in the custody of the department that

11 (a) ~~Any health or medical information, documents, or records designated as~~
 12 ~~confidential by state or federal law.~~

13 (b) ~~Any information, whether oral, written, electronic, visual, or in any other~~
 14 ~~form, including demographic information collected from an individual, that is in the~~
 15 ~~department's possession which does both of the following:~~

16 (i) ~~Relates~~ relates to the past, present, or future physical or mental health or
 17 condition of an individual, the provision of health care, including medications and
 18 prescriptions, to an individual, or the past, present, or future payment for the
 19 provision of health care, including medications and prescriptions, to an individual.

20 (ii) ~~Reveals the identity of the individual whose health care is the subject of~~
 21 ~~the information, or there is a reasonable basis to believe the information could be~~
 22 ~~utilized, either alone or with other information that is or should reasonably be known~~
 23 ~~to be available to predictable recipients of the information to reveal the identity of~~
 24 ~~that individual.~~

25 C. No records, or the working papers, recorded information, documents,
 26 or copies thereof or related thereto, produced by, obtained by, or disclosed to
 27 the commissioner, or any other person, in the course of or after the resolution
 28 of a complaint against any person or entity subject to the jurisdiction of the
 29 Department of Insurance and which are in the custody of the commissioner,
 30 shall be disclosed under Title 44 of the Louisiana Revised Statutes of 1950.

1 ~~BD.~~ (1) Nothing in this Section shall prohibit the communication of facts or
 2 documents that are part of an individual's protected health information to the
 3 individual or his representative. When authorized in writing by the individual, such
 4 facts and documents may also be released to the party designated in the written
 5 authorization: **health information or health information records, or copies**
 6 **thereof, in the custody of the commissioner to:**

7 **(a) The individual who is the subject of the health information or health**
 8 **information record.**

9 **(b) The authorized representative of the individual who is the subject of**
 10 **the health information or health information record.**

11 **(c) A third party when written authorization is provided by the**
 12 **individual who is the subject of the health information record or by the**
 13 **authorized representative of the individual who is the subject of the health**
 14 **information or health information record.**

15 **(2) Nothing in this Section shall prohibit the disclosure of copies of the**
 16 **complaint filed by the complainant or insured, the response by the person or**
 17 **entity subject to the jurisdiction of the department, or the final disposition to:**

18 **(a) The complainant or insured.**

19 **(b) The authorized representative of the complainant or insured.**

20 **(c) A third party when written authorization is provided by the**
 21 **complainant or insured or by the authorized representative of the complainant**
 22 **or insured.**

23 ~~(23)~~ Nothing in this Section shall prohibit the communication of facts,
 24 documents, or other information that is part of an individual's protected health
 25 information if requested by: **a record described in this Section, or the working**
 26 **papers, recorded information, documents, or copies thereof or related thereto,**
 27 **produced by, obtained by, or disclosed to the commissioner, or any other person**
 28 **and in the custody of the commissioner to a federal or state or federal** prosecuting
 29 attorney; ~~the office of the state police, public safety services, Department of Public~~
 30 ~~Safety and Corrections, in the conduct of an insurance fraud investigation;~~ **a law**

1 **enforcement agency, the** office of the state inspector general~~;~~, the **state** legislative
 2 auditor~~;~~, or the attorney general of this state **in connection with their statutory**
 3 **authority, or to any agency or communication district for the purpose of**
 4 **achieving coordinated and effective protection of the public health, safety, or**
 5 **welfare**. The department shall also share information with any state or federal
 6 agency for the purpose of investigating or determining **insurance or** tax fraud or the
 7 offset of any governmental benefit or with any other government entity authorized
 8 by law to conduct any audit, investigation, or similar activity in connection with the
 9 administration of any state or federally funded program.

10 (34) Nothing in this Section shall prohibit the **commissioner from using**
 11 **any records or other information in the custody of the department in the**
 12 **furtherance of any regulatory or legal action brought as part of the**
 13 **commissioner's official duties** ~~communication of facts, documents, or other~~
 14 ~~information which are part of an individual's protected health information pursuant~~
 15 ~~to an order of a court of competent jurisdiction issued after a contradictory hearing~~
 16 ~~based upon a finding that the records should be released in the interest of justice.~~

17 (4) ~~Nothing in this Section shall prevent the use of protected health~~
 18 ~~information for the compilation of statistical data in which the identity of the~~
 19 ~~individual is not disclosed.~~

20 **E. The identifiers described in this Section as confidential shall be the**
 21 **following:**

22 **(1) Names.**

23 **(2) All geographic subdivisions smaller than a state, including street**
 24 **address, city, county or parish, precinct, zip code, and any equivalent geocodes,**
 25 **except for the initial three digits of a zip code if, according to the current**
 26 **publicly available data from the Bureau of the Census:**

27 **(a) The geographic unit formed by combining all zip codes with the same**
 28 **three initial digits contains more than 20,000 people; and**

29 **(b) The initial three digits of a zip code for all such geographic units**
 30 **containing 20,000 or fewer people is changed to 000.**

1 ~~department insurer.~~ This record shall be maintained in such a manner as to permit
 2 the public to readily ascertain information concerning complaints against any person
 3 or entity subject to the jurisdiction of the department ~~insurance companies,~~
 4 without the necessity of reviewing each individual complaint. The retention period
 5 for each record described in this Section shall be no less than three calendar
 6 years, and any record may be disposed of thereafter according to R.S. 44:401
 7 et seq. The commissioner shall avail himself of such computer equipment as he has
 8 available to perform this task.

9 B.(1) The record required by this Section shall contain the following
 10 information including but not limited to the following:

11 (a) Date of complaint.

12 (b) Name of the ~~company~~ respondent person or entity against whom the
 13 complaint is lodged.

14 (c) Name Category of the complainant or insured.

15 (d) Category of the respondent person or entity against whom the
 16 complaint is lodged.

17 ~~(de)~~ Nature of Reason for the complaint.

18 ~~(ef)~~ Action and findings by the department Disposition.

19 ~~(fg)~~ Date of ~~any such action~~ disposition.

20 ~~(gh)~~ The response of the ~~insurance company~~ respondent, person or entity
 21 against whom the complaint is lodged in addition to the type of coverage.

22 (i) Type of coverage.

23 (2) It shall be sufficient for compliance with this Section that the
 24 commissioner uses the same coded categorical descriptors established by the
 25 National Association of Insurance Commissioners (NAIC) Complaint Database
 26 System (CDS) for the commissioner's database fields for the following
 27 categorical descriptors:

28 (a) Category of the complainant or insured.

29 (b) Category of the respondent person or entity.

30 (c) Type of coverage.

1 (d) Reason for complaint.

2 (e) Disposition.

3 (3) Where a categorical descriptor for the category of the complainant
4 or insured, category of the respondent person or entity, type of coverage, reason
5 for complaint, or disposition is unique to the state of Louisiana, that unique
6 categorical descriptor shall be reported, and the commissioner shall be in
7 compliance with this Section when using that unique categorical descriptor.

8 (4) Where the response of the person or entity against whom the
9 complaint is lodged is reported, it shall be sufficient for the commissioner to
10 disclose the following applicable categorical descriptors:

11 (a) Respondent agreed with complainant.

12 (b) Respondent disagreed with complainant.

13 (c) Respondent asserted that insufficient information was provided in
14 the complaint.

15 (d) No response was provided by respondent.

16 (e) Respondent did not contest the complaint.

17 (f) Respondent completed corrective action.

18 (g) Respondent provided information.

19 (h) Respondent provided an incomplete response.

20 (i) Respondent appealed the disposition.

21 (5) If respondent completes corrective action, the commissioner shall
22 disclose the applicable categorical descriptor for the specific corrective action
23 completed by reporting that categorical descriptor in the categorical descriptor
24 database field for corrective actions.

25 (6) If an appeal is taken, the final disposition on appeal shall be provided
26 subject to any decision of the appellate tribunal.

27 (27) The computer program employed by the commissioner shall, at a
28 minimum, be able to sort the information in ~~this~~ the database on any of the fields
29 described in ~~Paragraph (1)~~ of this Subsection and print out a written report thereof
30 no later than sixty days from the effective date of the Act which originated as

1 Senate Bill 281 of the 2012 Regular Session of the Louisiana Legislature.

2 (8) Where there was a final disposition of a complaint prior to the
3 effective date of the Act which originated as Senate Bill 281 of the 2012 Regular
4 Session of the Louisiana Legislature and the record of that complaint is in the
5 custody of the department, it shall be sufficient for the commissioner to report
6 the information required under this Section utilizing the database described in
7 this Section. It shall not be necessary for those records of complaints to be
8 reviewed for the purpose of applying new categorical descriptors or for new
9 categorical descriptors to be applied to those complaints.

10 * * *

11 Section 2. This Act shall become effective upon signature by the governor or, if not
12 signed by the governor, upon expiration of the time for bills to become law without signature
13 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
14 vetoed by the governor and subsequently approved by the legislature, this Act shall become
15 effective on the day following such approval.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____