
SUBSTITUTE HOUSE BILL 1043

AS AMENDED BY THE SENATE

Passed Legislature - 2017 Regular Session

State of Washington 65th Legislature 2017 Regular Session

By House Health Care & Wellness (originally sponsored by Representatives Robinson, Harris, Clibborn, Riccelli, Cody, Jinkins, Tharinger, Appleton, and Sawyer; by request of Insurance Commissioner)

READ FIRST TIME 02/01/17.

1 AN ACT Relating to nonpublic personal health information;
2 reenacting and amending RCW 42.56.400; and adding a new section to
3 chapter 48.02 RCW.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 48.02
6 RCW to read as follows:

7 (1) All nonpublic personal health information obtained by,
8 disclosed to, or in the custody of the commissioner, regardless of
9 the form or medium, is confidential and is not subject to public
10 disclosure under chapter 42.56 RCW. The commissioner shall not
11 disclose nonpublic personal health information except in the
12 furtherance of regulatory or legal action brought as a part of the
13 commissioner's official duties.

14 (2) The following definitions apply only for the purposes of this
15 section:

16 (a) "Health information" means any information or data, except
17 age or gender, whether oral or recorded in any form or medium,
18 created by or derived from a health care provider or a patient, or a
19 policyholder or enrollee, that relates to:

20 (i) The past, present, or future physical, mental, or behavioral
21 health or condition of an individual;

1 (ii) The provision of health care to an individual; or

2 (iii) Payment for the provision of health care to an individual.

3 (b) "Health care" means preventive, diagnostic, therapeutic,
4 rehabilitative, maintenance, or palliative care, services,
5 procedures, tests, or counseling that:

6 (i) Relates to the physical, mental, or behavioral condition of
7 an individual;

8 (ii) Affects the structure or function of the human body or any
9 part of the human body, including the banking of blood, sperm,
10 organs, or any other tissue; or

11 (iii) Prescribes, dispenses, or furnishes to an individual drugs
12 or biologicals, or medical devices or health care equipment and
13 supplies.

14 (c) "Nonpublic personal health information" means health
15 information:

16 (i) That identifies an individual who is the subject of the
17 information; or

18 (ii) With respect to which there is a reasonable basis to believe
19 that the information could be used to identify an individual.

20 (d) "Patient" means an individual who is receiving, has received,
21 or has sought health care. The term includes a deceased individual
22 who has received health care.

23 (e) "Policyholder" or "enrollee" means a person who is covered
24 by, enrolled in, has applied for, or purchased, an insurance policy,
25 a health plan as defined in RCW 48.43.005, a group plan, or any other
26 product regulated by the insurance commissioner. "Policyholder" or
27 "enrollee" may include, without limitation, a subscriber, member,
28 annuitant, beneficiary, spouse, or dependent.

29 (3) The commissioner may:

30 (a) Share documents, materials, or other information, including
31 the confidential documents, materials, or information subject to
32 subsection (1) of this section, with (i) the national association of
33 insurance commissioners and its affiliates and subsidiaries, and (ii)
34 regulatory and law enforcement officials of this and other states and
35 nations, the federal government, and international authorities, if
36 the recipient agrees to maintain the confidentiality and privileged
37 status of the document, material, or other information;

38 (b) Receive documents, materials, or information, including
39 otherwise either confidential or privileged documents, materials, or
40 information, from (i) the national association of insurance

1 commissioners and its affiliates and subsidiaries, and (ii)
2 regulatory and law enforcement officials of this and other states and
3 nations, the federal government, and international authorities and
4 must maintain as confidential or privileged any document, material,
5 or information received that is either confidential or privileged, or
6 both, under the laws of the jurisdiction that is the source of the
7 document, material, or information; and

8 (c) Enter into agreements governing the sharing and use of
9 information consistent with this subsection.

10 (4) No waiver of an existing claim of confidentiality or
11 privilege in the documents, materials, or information may occur as a
12 result of disclosure to the commissioner under this section or as a
13 result of sharing as authorized in subsection (3) of this section.

14 (5) The commissioner shall add language in large font to the
15 release consumers use when filing complaints with the office, whether
16 on-line or in writing, informing them that the office may share their
17 personal health information with other entities and for the purposes
18 authorized under subsection (3) of this section, and that the
19 information will only be shared if it is to be held confidential by
20 the other entity. Consumers shall be provided the opportunity to opt
21 out at the time of filing their complaint, indicating that their
22 personal health information may not be shared under subsection (3) of
23 this section.

24 **Sec. 2.** RCW 42.56.400 and 2016 c 142 s 20, 2016 c 142 s 19, and
25 2016 c 122 s 4 are each reenacted and amended to read as follows:

26 The following information relating to insurance and financial
27 institutions is exempt from disclosure under this chapter:

28 (1) Records maintained by the board of industrial insurance
29 appeals that are related to appeals of crime victims' compensation
30 claims filed with the board under RCW 7.68.110;

31 (2) Information obtained and exempted or withheld from public
32 inspection by the health care authority under RCW 41.05.026, whether
33 retained by the authority, transferred to another state purchased
34 health care program by the authority, or transferred by the authority
35 to a technical review committee created to facilitate the
36 development, acquisition, or implementation of state purchased health
37 care under chapter 41.05 RCW;

1 (3) The names and individual identification data of either all
2 owners or all insureds, or both, received by the insurance
3 commissioner under chapter 48.102 RCW;

4 (4) Information provided under RCW 48.30A.045 through 48.30A.060;

5 (5) Information provided under RCW 48.05.510 through 48.05.535,
6 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and
7 48.46.600 through 48.46.625;

8 (6) Examination reports and information obtained by the
9 department of financial institutions from banks under RCW 30A.04.075,
10 from savings banks under RCW 32.04.220, from savings and loan
11 associations under RCW 33.04.110, from credit unions under RCW
12 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and
13 from securities brokers and investment advisers under RCW 21.20.100,
14 all of which is confidential and privileged information;

15 (7) Information provided to the insurance commissioner under RCW
16 48.110.040(3);

17 (8) Documents, materials, or information obtained by the
18 insurance commissioner under RCW 48.02.065, all of which are
19 confidential and privileged;

20 (9) Documents, materials, or information obtained by the
21 insurance commissioner under RCW 48.31B.015(2) (l) and (m),
22 48.31B.025, 48.31B.030, and 48.31B.035, all of which are confidential
23 and privileged;

24 (10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and
25 7.70.140 that, alone or in combination with any other data, may
26 reveal the identity of a claimant, health care provider, health care
27 facility, insuring entity, or self-insurer involved in a particular
28 claim or a collection of claims. For the purposes of this subsection:

29 (a) "Claimant" has the same meaning as in RCW 48.140.010(2).

30 (b) "Health care facility" has the same meaning as in RCW
31 48.140.010(6).

32 (c) "Health care provider" has the same meaning as in RCW
33 48.140.010(7).

34 (d) "Insuring entity" has the same meaning as in RCW
35 48.140.010(8).

36 (e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

37 (11) Documents, materials, or information obtained by the
38 insurance commissioner under RCW 48.135.060;

39 (12) Documents, materials, or information obtained by the
40 insurance commissioner under RCW 48.37.060;

- 1 (13) Confidential and privileged documents obtained or produced
2 by the insurance commissioner and identified in RCW 48.37.080;
- 3 (14) Documents, materials, or information obtained by the
4 insurance commissioner under RCW 48.37.140;
- 5 (15) Documents, materials, or information obtained by the
6 insurance commissioner under RCW 48.17.595;
- 7 (16) Documents, materials, or information obtained by the
8 insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and
9 (7)(a)(ii);
- 10 (17) Documents, materials, or information obtained by the
11 insurance commissioner in the commissioner's capacity as receiver
12 under RCW 48.31.025 and 48.99.017, which are records under the
13 jurisdiction and control of the receivership court. The commissioner
14 is not required to search for, log, produce, or otherwise comply with
15 the public records act for any records that the commissioner obtains
16 under chapters 48.31 and 48.99 RCW in the commissioner's capacity as
17 a receiver, except as directed by the receivership court;
- 18 (18) Documents, materials, or information obtained by the
19 insurance commissioner under RCW 48.13.151;
- 20 (19) Data, information, and documents provided by a carrier
21 pursuant to section 1, chapter 172, Laws of 2010;
- 22 (20) Information in a filing of usage-based insurance about the
23 usage-based component of the rate pursuant to RCW 48.19.040(5)(b);
- 24 (21) Data, information, and documents, other than those described
25 in RCW 48.02.210(2), that are submitted to the office of the
26 insurance commissioner by an entity providing health care coverage
27 pursuant to RCW 28A.400.275 and 48.02.210;
- 28 (22) Data, information, and documents obtained by the insurance
29 commissioner under RCW 48.29.017;
- 30 (23) Information not subject to public inspection or public
31 disclosure under RCW 48.43.730(5);
- 32 (24) Documents, materials, or information obtained by the
33 insurance commissioner under chapter 48.05A RCW; ~~((and))~~
- 34 (25) Documents, materials, or information obtained by the
35 insurance commissioner under RCW 48.74.025, 48.74.028, 48.74.100(6),
36 48.74.110(2) (b) and (c), and 48.74.120 to the extent such documents,
37 materials, or information independently qualify for exemption from
38 disclosure as documents, materials, or information in possession of
39 the commissioner pursuant to a financial conduct examination and
40 exempt from disclosure under RCW 48.02.065; and

1 (26) Nonpublic personal health information obtained by, disclosed
2 to, or in the custody of the insurance commissioner, as provided in
3 section 1 of this act.

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