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HOUSE BILL 2228

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State of Washington                      64th Legislature                      2015 Regular Session

By Representatives Sawyer, Cody, Van De Wege, and Riccelli

1            AN ACT Relating to fees for health information; amending RCW  
2 70.02.010; creating a new section; and repealing 2014 c 225 s 70.

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

4            NEW SECTION.    **Sec. 1.** (1) The legislature finds that:

5            (a) Both federal and state law grant an individual and his or her  
6 legal representative access to the individual's health information;

7            (b) Both federal and state law require that any fee charged for  
8 providing the information be reasonable;

9            (c) Federal law limits the fee that may be charged to include  
10 only the cost of:

11            (i) Labor for copying the information;

12            (ii) Supplies for creating a paper copy or electronic media;

13            (iii) Postage; and

14            (iv) Preparing an explanation or summary of the information; and

15            (d) Washington law regarding fees for health information is  
16 inconsistent with federal law and enforcement practices.

17            (2) The legislature therefore intends to amend the state  
18 definition of "reasonable fee" to be consistent with federal law and  
19 enforcement practices.

1       **Sec. 2.** RCW 70.02.010 and 2014 c 220 s 4 are each amended to  
2 read as follows:

3       The definitions in this section apply throughout this chapter  
4 unless the context clearly requires otherwise.

5       (1) "Admission" has the same meaning as in RCW 71.05.020.

6       (2) "Audit" means an assessment, evaluation, determination, or  
7 investigation of a health care provider by a person not employed by  
8 or affiliated with the provider to determine compliance with:

9       (a) Statutory, regulatory, fiscal, medical, or scientific  
10 standards;

11       (b) A private or public program of payments to a health care  
12 provider; or

13       (c) Requirements for licensing, accreditation, or certification.

14       (3) "Commitment" has the same meaning as in RCW 71.05.020.

15       (4) "Custody" has the same meaning as in RCW 71.05.020.

16       (5) "Deidentified" means health information that does not  
17 identify an individual and with respect to which there is no  
18 reasonable basis to believe that the information can be used to  
19 identify an individual.

20       (6) "Department" means the department of social and health  
21 services.

22       (7) "Designated mental health professional" has the same meaning  
23 as in RCW 71.05.020 or 71.34.020, as applicable.

24       (8) "Detention" or "detain" has the same meaning as in RCW  
25 71.05.020.

26       (9) "Directory information" means information disclosing the  
27 presence, and for the purpose of identification, the name, location  
28 within a health care facility, and the general health condition of a  
29 particular patient who is a patient in a health care facility or who  
30 is currently receiving emergency health care in a health care  
31 facility.

32       (10) "Discharge" has the same meaning as in RCW 71.05.020.

33       (11) "Evaluation and treatment facility" has the same meaning as  
34 in RCW 71.05.020 or 71.34.020, as applicable.

35       (12) "Federal, state, or local law enforcement authorities" means  
36 an officer of any agency or authority in the United States, a state,  
37 a tribe, a territory, or a political subdivision of a state, a tribe,  
38 or a territory who is empowered by law to: (a) Investigate or conduct  
39 an official inquiry into a potential criminal violation of law; or

1 (b) prosecute or otherwise conduct a criminal proceeding arising from  
2 an alleged violation of law.

3 (13) "General health condition" means the patient's health status  
4 described in terms of "critical," "poor," "fair," "good,"  
5 "excellent," or terms denoting similar conditions.

6 (14) "Health care" means any care, service, or procedure provided  
7 by a health care provider:

8 (a) To diagnose, treat, or maintain a patient's physical or  
9 mental condition; or

10 (b) That affects the structure or any function of the human body.

11 (15) "Health care facility" means a hospital, clinic, nursing  
12 home, laboratory, office, or similar place where a health care  
13 provider provides health care to patients.

14 (16) "Health care information" means any information, whether  
15 oral or recorded in any form or medium, that identifies or can  
16 readily be associated with the identity of a patient and directly  
17 relates to the patient's health care, including a patient's  
18 deoxyribonucleic acid and identified sequence of chemical base pairs.  
19 The term includes any required accounting of disclosures of health  
20 care information.

21 (17) "Health care operations" means any of the following  
22 activities of a health care provider, health care facility, or third-  
23 party payor to the extent that the activities are related to  
24 functions that make an entity a health care provider, a health care  
25 facility, or a third-party payor:

26 (a) Conducting: Quality assessment and improvement activities,  
27 including outcomes evaluation and development of clinical guidelines,  
28 if the obtaining of generalizable knowledge is not the primary  
29 purpose of any studies resulting from such activities; population-  
30 based activities relating to improving health or reducing health care  
31 costs, protocol development, case management and care coordination,  
32 contacting of health care providers and patients with information  
33 about treatment alternatives; and related functions that do not  
34 include treatment;

35 (b) Reviewing the competence or qualifications of health care  
36 professionals, evaluating practitioner and provider performance and  
37 third-party payor performance, conducting training programs in which  
38 students, trainees, or practitioners in areas of health care learn  
39 under supervision to practice or improve their skills as health care

1 providers, training of nonhealth care professionals, accreditation,  
2 certification, licensing, or credentialing activities;

3 (c) Underwriting, premium rating, and other activities relating  
4 to the creation, renewal, or replacement of a contract of health  
5 insurance or health benefits, and ceding, securing, or placing a  
6 contract for reinsurance of risk relating to claims for health care,  
7 including stop-loss insurance and excess of loss insurance, if any  
8 applicable legal requirements are met;

9 (d) Conducting or arranging for medical review, legal services,  
10 and auditing functions, including fraud and abuse detection and  
11 compliance programs;

12 (e) Business planning and development, such as conducting cost-  
13 management and planning-related analyses related to managing and  
14 operating the health care facility or third-party payor, including  
15 formulary development and administration, development, or improvement  
16 of methods of payment or coverage policies; and

17 (f) Business management and general administrative activities of  
18 the health care facility, health care provider, or third-party payor  
19 including, but not limited to:

20 (i) Management activities relating to implementation of and  
21 compliance with the requirements of this chapter;

22 (ii) Customer service, including the provision of data analyses  
23 for policy holders, plan sponsors, or other customers, provided that  
24 health care information is not disclosed to such policy holder, plan  
25 sponsor, or customer;

26 (iii) Resolution of internal grievances;

27 (iv) The sale, transfer, merger, or consolidation of all or part  
28 of a health care provider, health care facility, or third-party payor  
29 with another health care provider, health care facility, or third-  
30 party payor or an entity that following such activity will become a  
31 health care provider, health care facility, or third-party payor, and  
32 due diligence related to such activity; and

33 (v) Consistent with applicable legal requirements, creating  
34 deidentified health care information or a limited dataset for the  
35 benefit of the health care provider, health care facility, or third-  
36 party payor.

37 (18) "Health care provider" means a person who is licensed,  
38 certified, registered, or otherwise authorized by the law of this  
39 state to provide health care in the ordinary course of business or  
40 practice of a profession.

1 (19) "Human immunodeficiency virus" or "HIV" has the same meaning  
2 as in RCW 70.24.017.

3 (20) "Imminent" has the same meaning as in RCW 71.05.020.

4 (21) "Information and records related to mental health services"  
5 means a type of health care information that relates to all  
6 information and records compiled, obtained, or maintained in the  
7 course of providing services by a mental health service agency or  
8 mental health professional to persons who are receiving or have  
9 received services for mental illness. The term includes mental health  
10 information contained in a medical bill, registration records, as  
11 defined in RCW 71.05.020, and all other records regarding the person  
12 maintained by the department, by regional support networks and their  
13 staff, and by treatment facilities. The term further includes  
14 documents of legal proceedings under chapter 71.05, 71.34, or 10.77  
15 RCW, or somatic health care information. For health care information  
16 maintained by a hospital as defined in RCW 70.41.020 or a health care  
17 facility or health care provider that participates with a hospital in  
18 an organized health care arrangement defined under federal law,  
19 "information and records related to mental health services" is  
20 limited to information and records of services provided by a mental  
21 health professional or information and records of services created by  
22 a hospital-operated community mental health program as defined in RCW  
23 71.24.025(6). The term does not include psychotherapy notes.

24 (22) "Information and records related to sexually transmitted  
25 diseases" means a type of health care information that relates to the  
26 identity of any person upon whom an HIV antibody test or other  
27 sexually transmitted infection test is performed, the results of such  
28 tests, and any information relating to diagnosis of or treatment for  
29 any confirmed sexually transmitted infections.

30 (23) "Institutional review board" means any board, committee, or  
31 other group formally designated by an institution, or authorized  
32 under federal or state law, to review, approve the initiation of, or  
33 conduct periodic review of research programs to assure the protection  
34 of the rights and welfare of human research subjects.

35 (24) "Legal counsel" has the same meaning as in RCW 71.05.020.

36 (25) "Local public health officer" has the same meaning as in RCW  
37 70.24.017.

38 (26) "Maintain," as related to health care information, means to  
39 hold, possess, preserve, retain, store, or control that information.

1 (27) "Mental health professional" means a psychiatrist,  
2 psychologist, psychiatric advanced registered nurse practitioner,  
3 psychiatric nurse, or social worker, and such other mental health  
4 professionals as may be defined by rules adopted by the secretary of  
5 social and health services under chapter 71.05 RCW, whether that  
6 person works in a private or public setting.

7 (28) "Mental health service agency" means a public or private  
8 agency that provides services to persons with mental disorders as  
9 defined under RCW 71.05.020 or 71.34.020 and receives funding from  
10 public sources. This includes evaluation and treatment facilities as  
11 defined in RCW 71.34.020, community mental health service delivery  
12 systems, or community mental health programs, as defined in RCW  
13 71.24.025, and facilities conducting competency evaluations and  
14 restoration under chapter 10.77 RCW.

15 (29) "Minor" has the same meaning as in RCW 71.34.020.

16 (30) "Parent" has the same meaning as in RCW 71.34.020.

17 (31) "Patient" means an individual who receives or has received  
18 health care. The term includes a deceased individual who has received  
19 health care.

20 (32) "Payment" means:

21 (a) The activities undertaken by:

22 (i) A third-party payor to obtain premiums or to determine or  
23 fulfill its responsibility for coverage and provision of benefits by  
24 the third-party payor; or

25 (ii) A health care provider, health care facility, or third-party  
26 payor, to obtain or provide reimbursement for the provision of health  
27 care; and

28 (b) The activities in (a) of this subsection that relate to the  
29 patient to whom health care is provided and that include, but are not  
30 limited to:

31 (i) Determinations of eligibility or coverage, including  
32 coordination of benefits or the determination of cost-sharing  
33 amounts, and adjudication or subrogation of health benefit claims;

34 (ii) Risk adjusting amounts due based on enrollee health status  
35 and demographic characteristics;

36 (iii) Billing, claims management, collection activities,  
37 obtaining payment under a contract for reinsurance, including stop-  
38 loss insurance and excess of loss insurance, and related health care  
39 data processing;

1 (iv) Review of health care services with respect to medical  
2 necessity, coverage under a health plan, appropriateness of care, or  
3 justification of charges;

4 (v) Utilization review activities, including precertification and  
5 preauthorization of services, and concurrent and retrospective review  
6 of services; and

7 (vi) Disclosure to consumer reporting agencies of any of the  
8 following health care information relating to collection of premiums  
9 or reimbursement:

10 (A) Name and address;

11 (B) Date of birth;

12 (C) Social security number;

13 (D) Payment history;

14 (E) Account number; and

15 (F) Name and address of the health care provider, health care  
16 facility, and/or third-party payor.

17 (33) "Person" means an individual, corporation, business trust,  
18 estate, trust, partnership, association, joint venture, government,  
19 governmental subdivision or agency, or any other legal or commercial  
20 entity.

21 (34) "Professional person" has the same meaning as in RCW  
22 71.05.020.

23 (35) "Psychiatric advanced registered nurse practitioner" has the  
24 same meaning as in RCW 71.05.020.

25 (36) "Psychotherapy notes" means notes recorded, in any medium,  
26 by a mental health professional documenting or analyzing the contents  
27 of conversations during a private counseling session or group, joint,  
28 or family counseling session, and that are separated from the rest of  
29 the individual's medical record. The term excludes mediation  
30 prescription and monitoring, counseling session start and stop times,  
31 the modalities and frequencies of treatment furnished, results of  
32 clinical tests, and any summary of the following items: Diagnosis,  
33 functional status, the treatment plan, symptoms, prognosis, and  
34 progress to date.

35 (37)(a) "Reasonable fee" means the charges for duplicating or  
36 searching the record(~~(, but)~~).

37 (i) For hard copy records requested by a patient or his or her  
38 legal representative, no fee may be charged for the first ten pages  
39 and the fee may not exceed thirty-eight cents per page for all other

1 pages over ten. No clerical fee for searching and handling may be  
2 charged.

3 (ii) For electronic copies of records requested by a patient or  
4 his or her legal representative, the fee may not exceed a total of  
5 six dollars and fifty cents.

6 (iii) For all other requestors, the fee shall not exceed sixty-  
7 five cents per page for the first thirty pages and fifty cents per  
8 page for all other pages. In addition, a clerical fee for searching  
9 and handling may be charged not to exceed fifteen dollars. However,  
10 where editing of records by a health care provider is required by  
11 statute and is done by the provider personally, the fee may be the  
12 usual and customary charge for a basic office visit.

13 (b) These amounts shall be adjusted biennially in accordance with  
14 changes in the consumer price index, all consumers, for Seattle-  
15 Tacoma metropolitan statistical area as determined by the secretary  
16 of health. ((However, where editing of records by a health care  
17 provider is required by statute and is done by the provider  
18 personally, the fee may be the usual and customary charge for a basic  
19 office visit.))

20 (38) "Release" has the same meaning as in RCW 71.05.020.

21 (39) "Resource management services" has the same meaning as in  
22 RCW 71.05.020.

23 (40) "Serious violent offense" has the same meaning as in RCW  
24 71.05.020.

25 (41) "Sexually transmitted infection" or "sexually transmitted  
26 disease" has the same meaning as "sexually transmitted disease" in  
27 RCW 70.24.017.

28 (42) "Test for a sexually transmitted disease" has the same  
29 meaning as in RCW 70.24.017.

30 (43) "Third-party payor" means an insurer regulated under Title  
31 48 RCW authorized to transact business in this state or other  
32 jurisdiction, including a health care service contractor, and health  
33 maintenance organization; or an employee welfare benefit plan,  
34 excluding fitness or wellness plans; or a state or federal health  
35 benefit program.

36 (44) "Treatment" means the provision, coordination, or management  
37 of health care and related services by one or more health care  
38 providers or health care facilities, including the coordination or  
39 management of health care by a health care provider or health care  
40 facility with a third party; consultation between health care

1 providers or health care facilities relating to a patient; or the  
2 referral of a patient for health care from one health care provider  
3 or health care facility to another.

4 NEW SECTION. **Sec. 3.** 2014 c 225 s 70 is repealed.

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