

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

HOUSE BILL NO. 2570

By: Anthony

AS INTRODUCED

An Act relating to public health and safety; amending Section 6, Chapter 347, O.S.L. 1992, as amended by Section 18, Chapter 332, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-120), which relates to confidentiality of health care data; requiring compliance with the Health Information Privacy Act; creating the Health Information Privacy Act; stating legislative findings and intent; defining terms; providing standards for disclosure of health care information; requiring certain persons to maintain record of external disclosures; stating requirements for validity of a patient authorization; providing for revocation of patient authorization; requiring record of patient authorization and revocation; providing grounds for disclosure without a patient authorization; requiring promulgation of health information practice requirements by the Department; stating principles of fair information practices for requirements; stating obligations of patient representatives; providing limitation on compulsory disclosure; providing exceptions to limitation on compulsory disclosure; requiring certain notification of request for disclosure; requiring

certification under oath of necessity for disclosure; providing for objection to compulsory disclosure; requiring maintenance of request for compulsory disclosure and certification; providing for civil remedies; providing for civil money penalties; providing for criminal penalty; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 6, Chapter 347, O.S.L. 1992, as amended by Section 18, Chapter 332, O.S.L. 1993 (63 O.S. Supp. 1993, Section 1-120), is amended to read as follows:

Section 1-120 A. Except as otherwise provided by Section 1-119 of this title and the Health Information Privacy Act, the individual forms, computer tapes, or other forms of data collected by and furnished to the Division of Health Care Information or to a data processor pursuant to the Oklahoma Health Care Information System Act shall be confidential and shall not be public records as defined in the Open Records Act, Section 24A.1 et seq. of Title 51 of the Oklahoma Statutes.

B. After approval by the State Department of Health or the Oklahoma Health Care Authority, the compilations prepared for release or dissemination from the data collected, except for a report prepared at the request of an individual data provider containing information concerning only its transactions, shall be public records. The Division shall establish a Health Care Information Advisory Committee as provided in Section 1-122 of this title, to assist with determinations related to data collection, and information to be released and disseminated to the public.

C. The confidentiality of identifying information is to be protected and the provisions of the Health Information Privacy Act and any other pertinent statutes, rules and regulations of the State of Oklahoma and of the federal government relative to confidentiality shall apply.

D. Identifying information shall not be disclosed, and shall not be used for any purpose except for the creation and maintenance of anonymous medical case histories for statistical reporting and data analysis.

E. The Division or other state agency receiving information pursuant to the Oklahoma Health Care Information System Act is prohibited from taking any administrative, investigative or other action with respect to any individual on the basis of the identifying information. The Division data analyzer or other state agency receiving information pursuant to the Oklahoma Health Care Information System Act is further prohibited from identifying, directly or indirectly, any individual in any report of scientific research or long-term evaluation, or otherwise disclosing identities in any manner.

F. Except as otherwise authorized by the Oklahoma Health Care Information System Act and the Health Information Privacy Act, identifying information submitted to the Division which would directly or indirectly identify any person shall not be disclosed by the Division either voluntarily or in response to any legal process, unless directed to by a court of competent jurisdiction, granted after application showing good cause therefor with notice of the hearing to the Division. In assessing good cause the court shall only grant such application if it seeks to challenge the statistical efficacy of a finding made by the Division or alleges a violation of confidentiality by the Division. Such application shall then be granted only when the public interest and the need for disclosure outweighs the injury to the person, to the physician-patient

relationship, and to the treatment services. Upon the granting of such order, the court, in determining the extent to which any disclosure of all or any part of any record is necessary, shall impose appropriate safeguards against unauthorized disclosure.

G. Any person who submits or receives data as required or authorized by the Oklahoma Health Care Information System Act shall be immune from liability in any civil action for any action taken as required by the provisions of the Oklahoma Health Care Information System Act. This immunity is in addition to any other immunity for the same or similar acts to which the person is otherwise entitled.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-130 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 2 through 13 of this act shall be known and may be cited as the "Health Information Privacy Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-131 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Legislature finds that:

1. The right of privacy is a personal and fundamental right protected by the Constitution of the United States;
2. Health care information is personal and sensitive information that, if improperly used or released, may do significant harm to the interests in privacy and in health care of a patient, and may affect the ability of a patient to obtain employment, education, insurance, credit and other necessities;
3. Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves;
4. Persons maintaining health care information need clear and certain rules for the disclosure of health care information; and

5. Persons other than health care providers obtain, use and disclose health care information in many different contexts and for many different purposes. The interest of a patient in the proper use and disclosure of the personal health care information of the patient continues even when the information has been initially disclosed and is held by persons other than health care providers.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-132 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Health Information Privacy Act:

1. "Audit" means an assessment, evaluation, determination or investigation of a person maintaining health care information or health care rendered by a person not employed by or affiliated with the person audited to determine compliance with:

- a. statutory, regulatory, fiscal, administrative, medical or scientific standards,
- b. the requirements of a private or public program of payment for health care, or
- c. requirements for licensure, accreditation or certification;

2. "Compulsory disclosure" means any disclosure of health care information mandated or required by federal or state law in connection with a judicial, legislative or administrative proceeding, including, but not limited to, disclosure required by subpoena, subpoena duces tecum, request or notice to produce, court order or any other method of requiring a person maintaining health care information to produce health care information under the criminal or civil discovery laws of any state or federal government or administrative agency thereof;

3. "Department" means the State Department of Health;

4. "Health care" means:

- a. any preventive, diagnostic, therapeutic, rehabilitative, maintenance, or palliative care, counseling, service or procedure provided by a health care provider:
 - (1) with respect to the physical or mental condition of a patient, or
 - (2) affecting the structure or function of the human body or any part thereof, including, but not limited to, banking of blood, sperm, organs or any other tissue, and
- b. any sale or dispensing of any drug, substance, device, equipment or other item to a patient or for the use of a patient, pursuant to a prescription;

5. "Health care information" means any data or information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient or other record subject, and:

- a. relates to the health care of a patient, or
- b. is obtained in the course of the health care of a patient from a health care provider, from the patient, from a member of the family of the patient or an individual with whom the patient has a close personal relationship, or from the legal representative of the patient;

6. "Health care provider" means a person who is licensed, certified, registered or otherwise authorized by law to provide health care in the ordinary course of business or practice of a profession;

7. "Institutional review board" means any board, committee or other group formally designated by an institution or authorized under federal or state law, to review, approve the initiation of, or

conduct periodic review of, research programs to assure the protection of the rights and welfare of human research subjects;

8. "Maintain", as related to health care information, means to create, collect, handle, hold, possess, preserve, retain, store, control or transmit such information;

9. "Patient" means an individual who receives or has received health care. The term includes a deceased individual who received health care prior to the death of the individual;

10. "Patient authorization" means an authorization that is valid under the provisions of Section 6 of this act;

11. "Patient representative" means any individual legally empowered to make decisions concerning the health care of a patient or the administrator or executor of the estate of a deceased patient; and

12. "Person" means:

- a. an individual, corporation, business trust, estate, trust, partnership, association, joint venture or any other legal or commercial entity, and
- b. except for purposes of Sections 12 and 13 of this act, a government, governmental subdivision, agency or authority.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-133 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as authorized by Section 7 of this act, no person other than a patient or patient representative may disclose health care information to any other person without the authorization of the patient. No person may disclose health care information under a patient authorization, except in accordance with the terms of the authorization. The provisions of this section shall apply both to disclosures of health care information and to redisclosures of the

health care information by a person to whom health care information has been disclosed.

B. Each person maintaining health care information shall maintain a record of all external disclosures of health care information made by the person concerning each patient, and the record shall become part of the health care information concerning each patient. The record of each disclosure shall include the name, address and institutional affiliation, if any, of the person to whom the health care information is disclosed, the date and purpose of the disclosure and, to the extent practicable, a description of the information disclosed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-134 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. To be valid, a patient authorization must:

1. Identify the patient;
2. Generally describe the health care information to be disclosed;
3. Identify the person to whom the health care information is to be disclosed;
4. Describe the purpose of the disclosure;
5. Limit the length of time the patient authorization will remain valid;
6. Be given by one of the following means:
 - a. in writing, dated and signed by the patient or the patient representative, or
 - b. in electronic form, dated and authenticated by the patient or the patient representative using a unique identifier; and
7. Not have been revoked under subsection B of this section.

B. A patient or patient representative may revoke the patient authorization at any time, unless disclosure is required to

effectuate payment for health care that has been provided to the patient, or other substantial action has been taken in reliance of the patient authorization. A patient may not maintain an action against a person for disclosure of health care information made in good faith reliance on the patient authorization, if the person had no notice of the revocation of the patient authorization at the time disclosure was made.

C. Each person maintaining health care information shall maintain a record of all patient authorizations and revocations thereof, and the record shall become part of the health care information concerning each patient.

D. Except as provided by the Health Information Privacy Act, the signing or authentication of an authorization by a patient or patient representative is not a waiver of any rights a patient has under other federal or state statutes, the rules of evidence or common law.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-135 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person maintaining health care information may disclose health care information about a patient without a patient authorization as follows:

1. Disclosure of patient information to the patient or a representative of the patient;

2. Disclosure of health care information by a family member or by any other individual with whom the patient has a personal relationship, if:

a. the health care information was disclosed to the individual by the patient or otherwise not in violation of the Health Information Privacy Act, and

b. the health care information was not disclosed to the individual making the disclosure in the course of providing health care to the patient;

3. Disclosure, to the extent necessary for the disclosing person to carry out its lawful activities, to the agent of the disclosing person, employee or independent contractor who is under a legal obligation to hold the health care information in confidence and not to use the health care information for any purpose other than the lawful purpose for which the health care information was obtained;

4. Disclosure to a health care provider who is providing health care to the patient, except as the disclosure is limited or prohibited by the patient;

5. Disclosure to any person if the person holding the health care information reasonably believes that the disclosure will avoid or minimize imminent danger to the health or safety of the patient or any other individual or is necessary to alleviate emergency circumstances affecting the health or safety of any individual;

6. Disclosure to a member of the immediate family of the patient, or to any other individual with whom the patient is known to have a close personal relationship, if the disclosure is made in accordance with good medical or other professional practice, except as the disclosure is limited or prohibited by the patient;

7. Disclosure to a person who is a successor in interest to the person maintaining the health care information. No person other than a licensed health care provider or the spouse of a deceased health care provider shall be considered a successor in interest to a health care provider;

8. Disclosure to federal, state or local governmental authorities as provided for in Sections 1-115 through 1-123 of this title, and to the extent the person holding the health care

information is required by law to report specific health care information:

- a. when needed to determine compliance with state or federal licensure, certification or registration rules or laws, or
- b. when needed to protect the public health;

9. Disclosure to a person who obtains health care information solely for purposes of an audit, if that person agrees in writing:

- a. to remove from the health care information or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable identification of the patient,
- b. not to disclose in any public report any medical information, and
- c. not to further disclose the health care information, except to accomplish the audit or to report unlawful or improper conduct involving health care payment fraud by a health care provider, a patient or other unlawful conduct by the health care provider;

10. Disclosure for use in a research project:

- a. that an institutional review board has determined:
 - (1) is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure,
 - (2) is reasonably impracticable without the use or disclosure of the health care information in individually identifiable form,
 - (3) contains reasonable safeguards to protect the information from redisclosure,
 - (4) contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project, and

(5) contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable identification of the patient, unless the institutional review board authorizes retention of identifying information for purposes of another research project, and

b. if the person agrees in writing:

(1) to remove from the health care information or destroy, at the earliest opportunity consistent with the purpose of the research project, information that would enable identification of the patient,

(2) not to disclose health care information in any public report, and

(3) not to further disclose the health care information, except as necessary to conduct the research project approved by the institutional review board;

11. Compulsory disclosure in accordance with the requirements of Section 10 of this act;

12. Disclosure to federal, state or local law enforcement authorities to the extent required by law;

13. Disclosure directed by a court in connection with a court-ordered examination of a patient; or

14. Disclosure if the person reasonably believes that the information is needed to assist in the identification of a deceased individual.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-136 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Before July 1, 1995, the State Department of Health shall promulgate rules which establish requirements for information practices of persons maintaining health care information. The requirements shall be consistent with the provisions of the Health Information Privacy Act and shall be in accordance with the principles set forth in subsection B of this section. The Department may from time to time revise the requirements promulgated under this subsection.

B. The requirements promulgated under subsection A of this section shall incorporate the following principles:

1. The patient or the patient representative has the right to know that health care information concerning the patient is maintained by any person and to know for what purposes the health care information is used;

2. Health care information concerning a patient must be collected only to the extent necessary to carry out the legitimate purpose for which the information is collected;

3. Health care information must be collected and used only for a necessary and lawful purpose;

4. Each person maintaining health care information must prepare a formal written statement of the fair information practices observed by such person. Each patient who provides health care information directly to a person maintaining health care information should receive a copy of the statement of the fair information practices of the person and should receive an explanation of the fair information practices upon request;

5. Health care information may not be used for any purposes beyond the purposes for which the health care information is collected, except as otherwise provided in the Health Information Privacy Act;

6. The patient or the patient representative should have access to health care information concerning the patient and has the right

to have a copy of the health care information made after payment of a reasonable charge, and, further, has the right to have a notation made with or in the health care information of any amendment or correction to the health care information requested by the patient or patient representative;

7. Any person maintaining, using or disseminating health care information shall implement reasonable safeguards for the security of the health care information and its storage, processing and transmission, whether in electronic or other form;

8. Methods to ensure the accuracy, reliability, relevance, completeness and timeliness of health care information should be instituted; and

9. If advisable, additional safeguards should be provided for highly sensitive health care information, such as health care information concerning mental health, substance abuse, communicable and genetic diseases and abortions, as well as health care information concerning celebrities and notorious individuals and health care information contained in adoption records.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-137 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person authorized to act as a patient representative may exercise the rights of the patient under the Health Information Privacy Act to the extent necessary to effectuate the terms or purposes of the grant of authority. A patient who is a minor or is authorized to consent to health care without the consent of a parent or legal guardian under state law may exclusively exercise the rights of a patient under the Health Information Privacy Act as to information pertaining to health care to which the minor has lawfully consented.

B. A patient representative shall act in good faith to represent the best interests of the patient with respect to health care information concerning the patient.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-138 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No person shall be compelled to disclose health care information maintained by the person pursuant to a request for compulsory disclosure in any judicial, legislative or administrative proceeding, unless:

1. The person maintaining the health care information has received a patient authorization to release the health care information in response to the request for compulsory disclosure;

2. The patient has knowingly and voluntarily waived the right to claim privilege or confidentiality for the health care information sought;

3. The patient is a party to the proceeding and has placed the physical or mental condition of the patient in issue;

4. The physical or mental condition of the patient is relevant to the execution or witnessing of a will;

5. The physical or mental condition of a deceased patient is placed in issue by any person claiming or defending through or as a beneficiary of the patient;

6. Health care information concerning the patient is to be used in the commitment proceeding of the patient;

7. The health care information is for use in any law enforcement proceeding or investigation in which a health care provider is the subject or a party. Health care information so disclosed shall not be used against the patient, unless the matter relates to payment for the health care of the patient, or unless compulsory disclosure is ordered as authorized under paragraph 9 of subsection A of this section;

8. The health care information is relevant to a proceeding brought under Section 11, 12 of 13 of this act; or

9. The court or federal or state agency or Congress or the state legislature has determined, after hearing any objections made pursuant to subsection D of this section, that particular health care information is subject to compulsory disclosure because the party seeking the health care information has demonstrated that the interest that would be served by disclosure outweighs the privacy interest of the patient.

B. Unless the court or federal or state agency or Congress or state legislature, for good cause shown, determines that the notification should be waived or modified, if health care information is sought under paragraph 2, 4 or 5 of subsection A of this section, or in a civil proceeding or investigation pursuant to paragraph 9 of subsection A of this section, the person requesting compulsory disclosure shall serve upon the person maintaining the health care information and upon the patient, the legal guardian of the patient, or other person legally authorized to act for the patient in the matter or on the attorney of the patient, the original or a copy of the compulsory disclosure request at least thirty (30) days in advance of the date on which compulsory disclosure is requested and a statement of the right of the patient and of the person maintaining the health care information to have any objections to the compulsory disclosure heard by such court or governmental agency or Congress or state legislature prior to the issuance of an order for the compulsory disclosure and the procedure to be followed to have any such objection heard. The service shall be made by certified mail, return receipt requested or by hand delivery, in addition to any form of service required by applicable state or federal law. The notice requirements of this subsection shall not apply to a request for compulsory disclosure of

health care information relating to a patient if made by or on behalf of a patient.

C. 1. A person seeking compulsory disclosure of health care information about a patient under this section shall provide the person maintaining the health care information from whom compulsory disclosure is sought with a written certification under oath by the person seeking such compulsory disclosure or an authorized representative of the person:

- a. identifying each paragraph of subsection A of this section under which compulsory disclosure of health care information is being sought, and
- b. stating that notice has been provided in accordance with the requirements of subsection B of this section or is not required by subsection B of this section with respect to any of the health care information sought.

2. A person may sign a certification described in paragraph 1 of this subsection, only if the person reasonably believes that paragraphs 1 through 9 of subsection A of this section identified in the certification provide an appropriate basis for the use of a request for compulsory disclosure.

D. If the person maintaining health care information or the patient or the legal guardian or attorney of the patient or other person legally authorized to represent the patient in the matter files in the manner set forth in the notice described in subsection B of this section the objection of the person to the request for compulsory disclosure prior to the date on which the compulsory disclosure is sought, the burden shall be on the person requesting the compulsory disclosure to seek an order from the appropriate court or federal or state agency or Congress or state legislature an order compelling the disclosure, and the person or persons filing the objection may defend in any proceeding to compel the disclosure.

E. Unless otherwise ordered by the court, state or federal agency, Congress or state legislature, a person maintaining health care information shall maintain a copy of each request for compulsory disclosure and accompanying certification as part of the health care information of the patient.

F. Disclosure of health care information pursuant to compulsory disclosure, in and of itself, shall not constitute a waiver of any privilege, objection or defense existing under any other law or rule of evidence or procedure.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-139 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person aggrieved by a violation of the Health Information Privacy Act may maintain an action for relief as provided in this section.

B. The court may order a person maintaining health care information to comply with the Health Information Privacy Act and may order any other appropriate relief. If the court determines that there is a violation of the Health Information Privacy Act, the aggrieved person shall be entitled to recover damages for any losses sustained as a result of the violation. If the violation results from willful or grossly negligent conduct, the aggrieved person may recover an amount not to exceed Ten Thousand Dollars (\$10,000.00), exclusive of any loss.

C. If a plaintiff prevails in an action brought under this section, the court, in addition to any other relief granted under this section, may award the plaintiff reasonable attorneys' fees and all other expenses incurred by the plaintiff in the litigation.

D. Any action brought under the Health Information Privacy Act must be filed within two (2) years from the date the alleged violation is discovered.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-140 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person who knowingly discloses health care information in violation of the Health Information Privacy Act shall be subject to, in addition to any other penalties that may be prescribed by law:

1. Except as provided in paragraph 2 of this section, a civil money penalty of not more than One Thousand Dollars (\$1,000.00) for each violation or not more than Twenty-five Thousand Dollars (\$25,000.00) for multiple violations; and

2. A civil money penalty of not more than One Million Dollars (\$1,000,000.00) if the State Department of Health finds that violation of the Health Information Privacy Act has occurred in such numbers or with such frequency as to constitute a general business practice.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-141 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person who, under false or fraudulent pretenses or with a false or fraudulent certification, requests or obtains health care information from a person maintaining health care information or a patient authorization shall be fined not more than Ten Thousand Dollars (\$10,000.00) or imprisoned for not more than six (6) months, or both, for each offense.

B. Any person who, under false or fraudulent pretenses or with a false or fraudulent certification, requests or obtains health care information from a person maintaining health care information and who intentionally uses, sells or transfers such health care information for remuneration, profit or for monetary gain shall be fined not more than Fifty Thousand Dollars (\$50,000.00) or imprisoned for not more than two (2) years or both, for each offense.

C. Any person who unlawfully takes health care information from a person maintaining health care information and who intentionally uses, sells or transfers such health care information for remuneration, profit or monetary gain shall be fined not more than Fifty Thousand Dollars (\$50,000.00) or imprisoned for not more than two (2) years or both, for each offense.

SECTION 14. This act shall become effective September 1, 1994.

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