

Regular Session, 2008

HOUSE BILL NO. 1073

BY REPRESENTATIVE HINES

HEALTH CARE/RECORDS: Provides for the privacy of personal health information

1 AN ACT

2 To enact Part VI-G of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 22:250.71 through 250.77, relative to personal health information;
4 to provide relative to the sale or distribution of such information that identifies
5 patients or prescribers; to provide for recognition of an individual's ownership of his
6 personal health information; to provide for safeguards to protect personal health
7 information; to provide for claims arising out of violations of such privacy rights;
8 and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Part VI-G of Chapter 1 of Title 22 of the Louisiana Revised Statutes of
11 1950, comprised of R.S. 22:250.71 through 250.77, is hereby enacted to read as follows:

12 PART VI-G. PRIVACY OF PERSONAL HEALTH INFORMATION

13 §250.71. Personal health information

14 A. Personal health information is the property of the individual and should
15 be protected at all times.

16 B. Personal health information privacy and confidentiality laws apply to all
17 persons that create, compile, duplicate, store, transmit, or use such information in
18 any form and in any setting.

19 C. Individuals are entitled to control access to their personal health
20 information and to obtain an audit trail of who has accessed their personal
21 information.

1 D. The purpose of this Part is to recognize the individual's ownership of his
2 personal health information, to recognize the individual's right to privacy in the
3 content of his personal health information, and to establish safeguards to protect
4 personal health information.

5 E. As used in this Part:

6 (1) "Audit trail" means a chronological record identifying specific persons
7 who have accessed an electronic medical record, whether or not any actual or
8 attempted security violations have occurred.

9 (2)(a) "Business associate" means, with respect to a health care provider, a
10 person who:

11 (i) On behalf of such health care provider, but other than in the capacity of
12 a member of the workforce of such health care provider, performs or assists in the
13 performance of either:

14 (aa) A function or activity involving the use or disclosure of individually
15 identifiable health information, including claims processing or administration, data
16 analysis, processing or administration, quality assurance, billing, practice
17 management, and repricing.

18 (bb) Any other function or activity governed by this Part.

19 (ii) Provides, other than in the capacity of a member of the workforce of such
20 health care provider, legal, actuarial, accounting, consulting, data aggregation,
21 management, administrative, accreditation, or financial services to or for such health
22 care provider where the provision of the service involves the disclosure of
23 individually identifiable information from such health care provider, or from another
24 business associate of such health care provider, to the person.

25 (b) A health care provider may be a business associate of another health care
26 provider.

27 (3) "De-identified personal health information" means not individually
28 identifiable health information. Information is deemed de-identified only if:

1 (a) The following identifiers of the individual or of relatives, employers, or
2 household members of the individual, are removed:

3 (i) Names.

4 (ii) All geographical subdivisions smaller than a state, including street
5 address, city, county, precinct, zip code, and their equivalent geocodes, except for
6 the initial three digits of a zip code if, according to the current publicly available data
7 from the United States Census Bureau either of the following apply:

8 (aa) The geographic unit formed by combining all zip codes with the same
9 three initial digits contains more than twenty thousand people.

10 (bb) The initial three digits of a zip code for all such geographical units
11 containing twenty thousand or fewer people is changed to three zeroes.

12 (iii) All elements of dates, except year, for dates directly related to an
13 individual, including birth date, admission date, discharge date, date of birth, and all
14 ages over eighty-nine and all elements of dates, including year, indicative of such
15 age, except that such ages and elements may be aggregated into a single category of
16 age ninety or older.

17 (iv) Telephone numbers.

18 (v) Fax numbers.

19 (vi) Electronic mail addresses.

20 (vii) Social security numbers.

21 (viii) Medical record numbers.

22 (ix) Health plan beneficiary numbers.

23 (x) Account numbers.

24 (xi) Certificate/license numbers.

25 (xii) Vehicle identifiers and serial numbers.

26 (xiii) Web Universal Resource Locators(URLs).

27 (xiv) Internet Protocol (IP) address numbers.

28 (xv) Biometric identifiers, including finger and voice prints.

29 (xvi) Full face photographic images and any comparable images.

1 ~~(xvii) Any other unique identifying number, characteristics, or code.~~

2 **(b) The health care provider does not have actual knowledge that the**
3 **information could be used alone or in combination with other information to identify**
4 **an individual who is a subject of the information.**

5 **(4) "Disclosure" means the release, transfer, provision of, access to, or**
6 **divulging in any other manner of personal health information outside of the entity**
7 **holding the information.**

8 **(5) "Essential health care operations" means the activities identified as health**
9 **care operations in the regulations adopted under the Health Insurance Portability and**
10 **Accountability Act of 1996 (HIPAA), when those activities cannot be carried on**
11 **with reasonable effectiveness and efficiency without personal health information and**
12 **when the health care provider utilizes only the minimum personal health information**
13 **necessary to achieve such end. Notwithstanding the foregoing, essential health care**
14 **operations shall not include: research; fund-raising; marketing of health and non-**
15 **health items and services; disclosure of personal health information for sale, rent, or**
16 **barter; and use of personal health information by a non-health related division of a**
17 **health care provider organizational arrangement.**

18 **(6) "Health care provider" means any person, corporation, facility, or**
19 **institution either licensed by this state or otherwise lawfully providing health care**
20 **services, including but not limited to a physician, hospital, office, clinic, health**
21 **center or other licensed health care facility, dentist, nurse, optometrist, podiatrist,**
22 **physical therapist, or mental health professional, and any officer, employee, or agent**
23 **of such provider acting in the course and scope of employment or agency related to**
24 **or supportive of health care services.**

25 **(7) "Health information exchange" means a multi-stakeholder entity that**
26 **enables or oversees the business, technical, and legal issues and operations involved**
27 **in the exchange and use of personal health information, in a secure manner, for the**
28 **purpose of promoting the improvement of health quality, safety, and efficiency.**

1 (8) "Health promotion" means the provision of public health programs by the
2 health care provider directly or through a business associate that attempt to prevent
3 illness and injury. "Health promotion" includes but is not limited to the following:

4 (a) Reminders to individuals about routine preventive procedures, such as
5 mammograms or colonoscopies.

6 (b) Mailings providing information on dietary practices, new developments
7 in health care, support groups, organ donation, cancer prevention, and health fairs.

8 (9) "Individual" means the subject of the personal health information,
9 including a guardian or other legal representative.

10 (10) "Individually identifiable health information" means personal health
11 information which explicitly or by implication identifies the individual who is the
12 subject of the information.

13 (11) "Informed authorization" means a knowledgeable and affirmative
14 agreement by an individual, conditioned upon the individual having been informed
15 of the probable risks and probable benefits associated with the action as identified
16 by the individuals health care provider.

17 (12) "Marketing" means:

18 (a) To make a communication about a product or service that encourages
19 recipients of the communication to purchase or use the product or service, unless the
20 communication is made:

21 (i) For treatment of the individual.

22 (ii) For case management or care coordination for the individual.

23 (iii) To direct or recommend any of the following:

24 (aa) Alternative treatments or therapies if recommended by the individual's
25 health care provider.

26 (bb) Health care providers.

27 (cc) Settings of care.

28 (iv) For treatment-related reminders or health promotion activities by health
29 care providers.

1 (b) An arrangement between a health care provider and any other person
2 whereby the health care provider discloses personal health information to the other
3 entity, in exchange for direct or indirect remuneration, for the other entity or its
4 affiliate to make a communication about its own product or service that encourages
5 recipients of the communication to purchase or use that product or service.

6 (13) "Medical emergency" means medically necessary care which is
7 immediately needed to preserve life, prevent serious impairment to bodily functions,
8 organs, or parts, or prevent placing the physical or mental health of the patient in
9 serious jeopardy.

10 (14) "Medical record" means any report, notes, orders, photographs,
11 diagnostic imaging, or other recorded data or information, whether maintained in
12 written, electronic, or other form, which is received or produced by a health care
13 provider, or any person employed by such provider, and contains information
14 relating to the medical history, examination, diagnosis, or treatment of an individual.

15 (15) "Person" means a natural person, trust or estate, partnership,
16 corporation, professional association or corporation, or other entity, public or private,
17 and not the subject of the personal health information.

18 (16) "Personal health information" means any information, whether oral or
19 recorded in any form or medium, that meets each of the following criteria:

20 (a) Is created or received by a health care provider, health plan, public
21 health authority, employer, life insurer, school or university, or health care
22 clearinghouse.

23 (b) Relates to the past, present, or future physical or mental health or
24 condition of an individual; the provision of health care to an individual; or the past,
25 present, or future payment for the provision of health care to an individual.

26 (c) Explicitly or by implication identifies the individual who is the subject
27 of the information.

28 (17) "Treatment" means the provision, coordination, or management of
29 health care by health care providers, including the coordination or management of

1 health care by a health care provider with a third party; consultation between health
2 care providers relating to a patient; or the referral of a patient for health care from
3 one health care provider to another. "Treatment" includes health care management
4 of the individual through risk assessment, case management, and disease
5 management, where authorized by the treating health care provider.

6 (18) "Use" means, with respect to personal health information, the sharing,
7 employment, application, utilization, examination, or analysis of such information
8 within an entity that maintains such information.

9 §250.72. Personal health information rights of the individual

10 A. The individual has the following rights in regards to his personal health
11 information that is in the possession of a health care provider or, if not in the
12 possession of the health care provider, in the possession of a business associate of
13 the health care provider:

14 (1) The individual has the right to inspect his personal health information
15 unless otherwise provided for by law.

16 (2) The individual has the right to a copy of his personal health information.
17 The individual shall be entitled to a copy upon request. The charge for the copying
18 of an individual's medical records shall not exceed fifteen dollars for the first thirty
19 pages or fifty cents per page, whichever is greater; however, copies of filmed records
20 such as radiograms, x-rays, and sonograms shall be copied at a reasonable cost.
21 When available and at a reasonable cost, the individual may request and receive a
22 copy of his personal health information in an electronic format.

23 (3) The individual has the right to amend his personal health information.
24 The individual may request the health care provider to supplement, amend, or correct
25 his personal health information. Within a reasonable time of the request, the health
26 care provider shall make the requested change or provide written notice of denial of
27 the request and the reason for the denial. A notice of denial shall be made part of the
28 individual's medical record.

1 (4) The individual has the right to receive an accounting of all disclosures
2 of his personal health information.

3 (5) The individual has the right to receive an audit trail regarding access to
4 his electronic personal health information.

5 §250.73. Personal health information; disclosure.

6 A. All personal health information contained in an individual's medical
7 records shall be deemed to be the property of the individual.

8 B. A health care provider shall not disclose the personal health information
9 of an individual without the informed and written authorization of that individual,
10 unless otherwise authorized or required by law, by the need to protect the welfare of
11 the individual or the public interest, or as permitted by this Section.

12 C. Notwithstanding Subsection B of this Section, a health care provider may
13 disclose, without authorization, an individual's personal health information only as
14 is necessary for the purpose of treatment of the individual, payment for services
15 rendered to the individual, and essential health care operations, unless the individual
16 elects otherwise in writing. The following shall apply to such an election:

17 (1) At the initial encounter with the individual, the health care provider shall
18 inform the individual of the individual's right to elect to restrict the disclosure of the
19 individual's personal health information to health care providers or payors.

20 (2) If the individual elects to restrict disclosure of personal health
21 information, the health care provider shall supply a form, as described in Subsection
22 I of this Section, on which the individual shall make such election in writing,
23 including electronic signature.

24 (3) An individual may elect at any time after the initial encounter with a
25 health care provider to withhold authorization to disclose personal health information
26 to health care providers or payors. Such election is effective on the date the written
27 election is made and the health care provider is not liable for disclosures made prior
28 to receipt of such election.

1 (4) An individual may elect at any time to revoke an election to withhold
2 authorization to disclose personal health information to health care providers and
3 payors. Such revocation is effective on the date an oral or written election to revoke
4 is made and received by the health care provider. The health care provider shall not
5 be liable for an access denial made prior to such election.

6 (5) Notwithstanding a prior election by an individual to restrict disclosure,
7 a health care provider may disclose personal health information to an insurance
8 issuer or other person when a written request for personal health information from
9 the insurance issuer or other person includes the individual's signature authorizing
10 disclosure.

11 (6) A health care provider shall not be liable to any individual for any
12 adverse health outcome to an individual that results from the individual's election to
13 limit access to his personal health information permitted by this Section.

14 (7) If the individual elects to restrict disclosure of personal health
15 information for the purpose of payment, the health care provider may condition
16 treatment upon self-payment by the individual, unless such condition would
17 otherwise be prohibited by law.

18 D. The third party, including a business associate of the health care provider,
19 to whom personal health information is disclosed under the terms of this Part may
20 not re-disclose the personal health information to any other person unless the re-
21 disclosure is authorized by the individual who is the subject of the information or the
22 re-disclosure is otherwise authorized or required by law.

23 E. This Section shall not prohibit the release of personal health information
24 by a health care provider during a medical emergency when the health care provider
25 is unable to obtain the individual's consent due to the individual's condition or the
26 nature of the medical emergency. The treating health care provider shall make the
27 clinical determination as to whether or not a medical emergency exists.

28 F. Personal health information may be disclosed or otherwise made available
29 only if the health information is de-identified such that the information does not

1 identify the individual who is the subject of the information and with respect to
2 which there is no reasonable basis to believe that the information can be used to
3 identify the individual.

4 G. No individual shall be required to provide authorization to release
5 personal health information relating to such individual as a condition of receiving
6 services from a health care provider.

7 H. This Section shall not be construed to impose an obligation on a health
8 care provider to disclose personal health information, unless otherwise required by
9 law.

10 I. The form provided by a health care provider to an individual for the
11 purpose of restricting disclosure of personal health information or authorizing
12 disclosure of personal health information shall:

13 (a) Be written in a clear, plain language, in large-type form.

14 (b) Contain the name of the health care provider.

15 (c) Relative to authorization to disclose personal health information, contain
16 each of the following in a clear and conspicuous manner:

17 (i) A statement of the need for and proposed uses of the personal health
18 information.

19 (ii) A statement that personal health information may be disclosed.

20 (iii) A statement of election that personal health information may not be
21 disclosed.

22 (iv) A statement that the authorization may be revoked at any future time,
23 orally or in writing.

24 (v) A statement that the authorization will be effective until revoked.

25 J. In the event of an unauthorized disclosure of personal health information
26 by a health care provider, the health care provider shall promptly notify in writing
27 the individual or individuals whose personal health information was disclosed and
28 the attorney general.

1 §250.74. Use and disclosure of personal health information; marketing

2 A. A health care provider shall not use or disclose personal health
3 information for the purpose of marketing without express written authorization from
4 the individual. Such authorization shall be limited to products or services that are
5 directly related to the health of the individual and the authorization shall clearly
6 indicate that marketing may be comprehensive, may include personal health
7 information, and, if applicable, is intended to result in remuneration to the health
8 care provider from a third party.

9 B. The disclosure of personal health information by a health care provider
10 to a marketer shall be conditioned on the marketer's agreement:

11 (1) Not to re-disclose the personal health information.

12 (2) To disclose, in the course of marketing, that the health care provider and
13 the marketer have a financial arrangement.

14 C. Personal health information disclosed or used for marketing shall not be
15 disclosed by voice mail, an unattended fax, or through other methods of
16 communication that are not secure.

17 §250.75. Use and disclosure of personal health information; research

18 A health care provider shall not use or disclose personal health information
19 for research purposes without the express written authorization of the individual who
20 is the subject of the information, unless otherwise authorized by law.

21 §250.76. Use and disclosure of personal health information; health information
22 exchange

23 A. A health care provider may disclose an individual's personal health
24 information and information about the location of the individual's medical records
25 to a health information exchange. Only a health care provider, for purposes of
26 treatment, may have access to personal health information in a health information
27 exchange.

28 B. A health information exchange shall adhere to the personal health
29 information requirements for health care providers. A health information exchange

1 shall maintain an audit log of health care providers who access personal health
2 information, including the following:

3 (1) The identity of the health care provider accessing the information.

4 (2) The identity of the individual whose personal health information was
5 accessed by the health care provider.

6 (3) The date the personal health information was accessed.

7 C. A health information exchange shall be certified to be in compliance with
8 nationally accepted interoperability standards and practices.

9 D. No person may in any way require a health care provider to participate
10 in a health information exchange as a condition of payment or participation.

11 E. A health information exchange shall provide a mechanism under which
12 an individual's personal health information may be suppressed from view in the
13 event the individual elects not to disclose such information. A health care provider
14 participating in a health information exchange shall notify the health information
15 exchange of the exclusion request. Upon receipt of the exclusion request, the health
16 information exchange shall suppress from view all but the individual's demographic
17 information.

18 §250.77. Penalties

19 A. An individual may make a complaint in writing to the attorney general
20 of any violation of any of the provisions of this Part.

21 B. Upon receipt of such complaint, the attorney general shall review the
22 complaint, and where sufficient evidence of a violation is presented, conduct
23 investigations to determine whether a violation of this Part has occurred.

24 C. In addition to any other penalties provided for by law, any violation of the
25 provisions of this Part shall constitute an unfair and deceptive trade practice within
26 the meaning of Chapter 13 of Title 51 of the Louisiana Revised Statutes of 1950.
27 Any right or remedy set forth in such Chapter may be used to enforce the provisions
28 of this Part.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Hines

HB No. 1073

Abstract: Recognizes the individual's ownership of his personal health information and his right to privacy in the content of such information and establishes safeguards to protect such information.

Proposed law establishes procedures for access to personal health care information that is in the possession of health care providers. Proposed law specifies the rights of the individual who is the subject of the personal health care information.

Proposed law defines personal health information and describes the privacy of personal health information as well as how its privacy and confidentiality provisions apply.

Proposed law defines other terms: audit trail, business associate, de-identified health information, health care provider, essential health care operation, disclosure, health information exchange, and informed authorization.

Proposed law describes an individual's rights in regards to his personal health information to which a health care provider has access. Proposed law specifies that an individual has the right to inspect or copy, upon request to the provider, his medical records at a reasonable cost to be incurred by the individual.

Proposed law further specifies that an individual may request the provider to supplement, amend, or correct his information at which time the health care provider must comply or provide written notice of denial with reason which shall be made part of the individual's medical record.

Proposed law establishes that all personal health information is the property of the individual which shall not be disclosed without informed and written authorization, unless otherwise authorized by law or necessary for the individual's treatment.

Proposed law prohibits a health care provider from disclosing personal health information for marketing purposes without the individual's express written authorization which shall be limited to products or services directly related to the individual's health and conditioned upon the marketer's agreement to not re-disclose such information and to disclose that the provider and marketer have a financial arrangement.

Proposed law provides that a health information exchange must adhere to the same requirements of a health care provider as it relates to individual's personal health information and must maintain an audit log identifying the providers who access said information.

Proposed law institutes procedure for complaints brought against a health care provider in violation of proposed law, including filing a written complaint with the attorney general who will review and investigate. Provides that if a provider is found to be in violation, then the attorney general may use any right or remedy set forth in the Unfair Trade Practices and Consumer Protection Act.

(Adds R.S. 22:250.71-250.77)