

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001

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SENATE BILL 992

Short Title: Protected Health Information. (Public)

Sponsors: Senators Rand; Dannelly, Garrou, Hagan, Swindell, Thomas, and Wellons.

Referred to: Judiciary I.

April 5, 2001

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR AN INDIVIDUAL TO HAVE ACCESS TO
3 PROTECTED HEALTH INFORMATION ABOUT THE INDIVIDUAL.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. The General Statutes are amended by adding the following
6 new Chapter to read:

7 "Chapter 132A.

8 "Article 1.

9 "Patient Access to Medical Records.

10 "§ 132A-1. Definitions.

11 As used in this Article, unless the context clearly requires otherwise, the term:

12 (1) 'Covered entity' means a:

13 a. Health benefit plan as defined in G.S. 58-3-167;

14 b. Health care clearinghouse; and

15 c. Health care provider that transmits any health information in
16 electronic form in connection with a transaction under this
17 Article.

18 (2) 'Designated record set' means:

19 a. A group of records maintained by or for a covered entity that is:

20 1. The medical records and billing records about
21 individuals maintained by or for a covered health care
22 provider;

23 2. The enrollment, payment, claims adjudication, and case
24 or medical management record systems maintained by or
25 for a health benefit plan; or

26 3. Used, in whole or in part, by or for the covered entity to
27 make decisions about individuals.

- 1 b. For purposes of this subdivision, the term record means any
2 item, collection, or grouping of information that includes
3 protected health information and is maintained, collected, used,
4 or disseminated by or for a covered entity.
- 5 (3) 'Health care clearinghouse' means a public or private entity, including
6 a billing service, repricing company, community health management
7 information system, or community health information system, and
8 value-added networks and switches, that does either of the following:
- 9 a. Processes or facilitates the processing of health information
10 received from another entity in a nonstandard format or
11 containing nonstandard data content into standard data elements
12 or a standard transaction.
- 13 b. Receives a standard transaction from another entity and
14 processes or facilitates the processing of health information into
15 nonstandard format or nonstandard data content for the
16 receiving entity.
- 17 (4) 'Health care provider' means a provider of medical or health services,
18 and any other person or organization who furnishes, bills, or is paid for
19 health care in the normal course of business.
- 20 (5) 'Health information' means any information, whether oral or recorded,
21 in any form or medium, that:
- 22 a. Is created or received by a health care provider, health benefit
23 plan, public health authority, employer, life insurer, school or
24 university, or health care clearinghouse; and
- 25 b. Relates to the past, present, or future physical or mental health
26 or condition of an individual; the provision of health care to an
27 individual; or the past, present, or future payment for the
28 provision of health care to an individual.
- 29 (6) 'Individual' means the person who is the subject of protected health
30 information.
- 31 (7) 'Protected health information' means individually identifiable health
32 information that is transmitted or maintained by electronic media or by
33 another form or medium.
- 34 (8) 'Transaction' means the transmission of information between two
35 parties to carry out financial or administrative activities related to
36 health care. It includes the following types of information
37 transmission:
- 38 a. Health care claims or equivalent encounter information.
- 39 b. Health care payment and remittance advice.
- 40 c. Coordination of benefits.
- 41 d. Health care claim status.
- 42 e. Enrollment and disenrollment in a health benefit plan.
- 43 f. Eligibility for a health benefit plan.
- 44 g. Health plan premium payments.

1 h. Referral certification and authorization.

2 i. First report of injury.

3 j. Health claims attachments.

4 **"§ 132A-2. Right of access of individuals to protected health information;**
5 **exceptions; grounds for denial; review of denial; implementation**
6 **specifications.**

7 (a) Access to Protected Health Information. – Except as otherwise provided in
8 this section, an individual has a right of access to inspect and obtain a copy of protected
9 health information about the individual in a designated record set, for as long as the
10 protected health information is in the designated record set, except for:

11 (1) Psychotherapy notes;

12 (2) Information compiled in reasonable anticipation of, or for use in, a
13 civil, criminal, or administrative action or proceeding; and

14 (3) Protected health information maintained by a covered entity that is:

15 a. Subject to the Clinical Laboratory Improvement Amendments
16 of 1988, to the extent the provision of access to the individual
17 would be prohibited by law; or

18 b. Exempt from Clinical Laboratory Improvement Amendments of
19 1988.

20 (b) Unreviewable Grounds for Denial of Access. – A covered entity may deny an
21 individual access without providing the individual an opportunity for review of the
22 denial, in the following circumstances:

23 (1) The protected health information is excepted from the right of access
24 by subsection (a) of this section.

25 (2) A covered entity that is a correctional institution or a covered health
26 care provider acting under the direction of the correctional institution
27 may deny, in whole or in part, an inmate's request to obtain a copy of
28 protected health information, if obtaining the copy would jeopardize
29 the health, safety, security, custody, or rehabilitation of the individual
30 or of other inmates, or the safety of any officer, employee, or other
31 person at the correctional institution or responsible for the transporting
32 of the inmate.

33 (3) An individual's access to protected health information created or
34 obtained by a covered health care provider in the course of research
35 that includes treatment may be temporarily suspended for as long as
36 the research is in progress, provided that the individual has agreed to
37 the denial of access when consenting to participate in the research that
38 includes treatment, and the covered health care provider has informed
39 the individual that the right of access will be reinstated upon
40 completion of the research.

41 (4) An individual's access may be denied if the protected health
42 information was obtained from someone other than a health care
43 provider under a promise of confidentiality and the access requested
44 would be reasonably likely to reveal the source of the information.

1 (c) Reviewable Grounds for Denial of Access. – A covered entity may deny an
2 individual access, provided that the individual is given a right to have the denial
3 reviewed, as required by subsection (d) of this section, in the following circumstances:

4 (1) A licensed health care professional has determined, in the exercise of
5 professional judgment, that the access requested is reasonably likely to
6 endanger the life or physical safety of the individual or another person;

7 (2) The protected health information makes reference to another person
8 (unless the other person is a health care provider) and a licensed health
9 care professional has determined, in the exercise of professional
10 judgment, that the access requested is reasonably likely to cause
11 substantial harm to the other person; or

12 (3) The request for access is made by the individual's personal
13 representative and a licensed health care professional has determined,
14 in the exercise of professional judgment, that the provision of access to
15 the personal representative is reasonably likely to cause substantial
16 harm to the individual or another person.

17 (d) Review of Denial of Access. – If access is denied on a ground permitted
18 under subsection (c) of this section, the individual has the right to have the denial
19 reviewed by a licensed health care professional who is designated by the covered entity
20 to act as a reviewing official and who did not participate in the original decision to
21 deny. The covered entity must provide or deny access in accordance with the
22 determination of the reviewing official under subdivision (g)(4) of this section.

23 (e) Implementation.

24 (1) Individual request for access. – The covered entity must permit an
25 individual to request access to inspect or to obtain a copy of the
26 protected health information about the individual that is maintained in
27 a designated record set. The covered entity may require individuals to
28 make requests for access in writing, provided that it informs
29 individuals of the requirement.

30 (2) Entity timely action.

31 a. Except as otherwise provided in this subsection, the covered
32 entity must act on a request for access not later than 30 days
33 after receipt of the request, as follows:

34 1. If the covered entity grants the request, in whole or in
35 part, it must inform the individual of the acceptance of
36 the request and provide the access requested, in
37 accordance with subsection (f) of this section.

38 2. If the covered entity denies the request, in whole or in
39 part, it must provide the individual with a written denial,
40 in accordance with subsection (g) of this section.

41 b. If the request for access is for protected health information that
42 is not maintained or accessible to the covered entity on-site, the
43 covered entity must take an action required by sub-subdivision

1 a. of this subdivision by not later than 60 days from the receipt
2 of the request.

3 c. If the covered entity is unable to take an action required by sub-
4 subdivision a. of this subdivision within the time required by
5 sub-subdivision a. or b. of this subdivision, as applicable, a
6 covered entity may extend the time for the action by no more
7 than 30 days provided that:

8 1. The covered entity, within the time limit set by sub-
9 subdivision a. or b. of this subdivision, as applicable,
10 provides the individual with a written statement of the
11 reasons for the delay and the date by which the covered
12 entity will complete its action on the request; and

13 2. The covered entity may have only one such extension of
14 time for action on a request for access.

15 (f) Implementation: Provision of Access. – If the covered entity provides an
16 individual with access, in whole or in part, to protected health information, the covered
17 entity must comply with the following requirements:

18 (1) Providing the access requested. – The covered entity must provide the
19 access requested by individuals, including inspection or obtaining a
20 copy, or both, of the protected health information about them in
21 designated record sets. If the same protected health information that is
22 the subject of a request for access is maintained in more than one
23 designated record set or at more than one location, the covered entity
24 need only produce the protected health information once in response to
25 a request for access.

26 (2) Form of access requested.

27 a. The covered entity must provide the individual with access to
28 the protected health information in the form or format requested
29 by the individual if it is readily producible in the form or format
30 requested. If it is not readily producible in the form or format
31 requested, then access must be provided in a readable hard copy
32 form or such other form or format as agreed to by the covered
33 entity and the individual.

34 b. The covered entity may provide the individual with a summary
35 of the protected health information requested, in lieu of
36 providing access to the protected health information or may
37 provide an explanation of the protected health information to
38 which access has been provided, if:

39 1. The individual agrees in advance to the summary or
40 explanation; and

41 2. The individual agrees in advance to the fees imposed, if
42 any, by the covered entity for the summary or
43 explanation.

- 1 (3) Time and manner of access. – The covered entity must provide the
2 access as requested by the individual in a timely manner as required by
3 subsection (e) of this section, including arranging with the individual
4 for a convenient time and place to inspect or obtain a copy of the
5 protected health information, or mailing the copy of the protected
6 health information at the individual's request. The covered entity may
7 discuss the scope, format, and other aspects of the request for access
8 with the individual as necessary to facilitate the timely provision of
9 access.
- 10 (4) Fees. – If the individual requests a copy of the protected health
11 information or agrees to a summary or explanation of the information,
12 the covered entity may impose a reasonable, cost-based fee, provided
13 that the fee includes only the cost of:
- 14 a. Copying, including the cost of supplies for and labor of
15 copying, the protected health information requested by the
16 individual;
- 17 b. Postage, when the individual has requested the copy, or the
18 summary or explanation, be mailed; and
- 19 c. Preparing an explanation or summary of the protected health
20 information, if agreed to by the individual as required by
21 subdivision (2) of this subsection.
- 22 (g) Implementation: Denial of Access. – If the covered entity denies access, in
23 whole or in part, to protected health information, the covered entity must comply with
24 the following requirements:
- 25 (1) Making other information accessible. – The covered entity must, to the
26 extent possible, give the individual access to any other protected health
27 information requested, after excluding the protected health information
28 as to which the covered entity has a ground to deny access.
- 29 (2) Denial. – The covered entity must provide a timely, written denial to
30 the individual, in accordance with subsection (e) of this section. The
31 denial must be in plain language and contain:
- 32 a. The basis for the denial;
- 33 b. If applicable, a statement of the individual's review rights under
34 subsection (d) of this section, including a description of how the
35 individual may exercise the review rights; and
- 36 c. A description of how the individual may complain to the
37 covered entity pursuant to the complaint procedures in G.S.
38 132A-3. The description must include the name, or title, and
39 telephone number of the contact person designated in G.S.
40 132A-3.
- 41 (3) Other responsibility. – If the covered entity does not maintain the
42 protected health information that is the subject of the individual's
43 request for access, and the covered entity knows where the requested

1 information is maintained, the covered entity must inform the
2 individual where to direct the request for access.

- 3 (4) Review of denial requested. – If the individual has requested a review
4 of a denial under subsection (d) of this section, the covered entity must
5 designate a licensed health care professional, who was not directly
6 involved in the denial to review the decision to deny access. The
7 covered entity must promptly refer a request for review to the
8 designated reviewing official. The designated reviewing official must
9 determine, within a reasonable period of time, whether or not to deny
10 the access requested based on the standards in subsection (c) of this
11 section. The covered entity must promptly provide written notice to the
12 individual of the determination of the designated reviewing official
13 and take other action as required by this section to carry out the
14 designated reviewing official's determination.

15 (h) Implementation: Documentation. – A covered entity must document the
16 following and retain the documentation as required by G.S. 132A-3:

- 17 (1) The designated record sets that are subject to access by individuals;
18 and
19 (2) The titles of the persons or offices responsible for receiving and
20 processing requests for access by individuals.

21 **"§ 132A-3. Administrative requirements.**

22 (a) Personnel Designations.

- 23 (1) A covered entity must designate a privacy official who is responsible
24 for the development and implementation of the policies and procedures
25 of the entity.
26 (2) A covered entity must designate a contact person or office who is
27 responsible for receiving complaints under this section.
28 (3) A covered entity must document the personnel designations required
29 under this subsection.

30 (b) Training.

- 31 (1) A covered entity must train all members of its workforce on the
32 policies and procedures with respect to protected health information
33 required by this Article as necessary and appropriate for members of
34 the workforce to carry out their functions within the covered entity.
35 (2) Training provided by the covered entity shall be provided as follows:
36 a. To each member of the covered entity's workforce.
37 b. To each member of the covered entity's workforce whose
38 functions are affected by a material change in the policies or
39 procedures required by this Article, within a reasonable period
40 of time after the material change becomes effective.

41 A covered entity must document that the training required by this
42 subsection has been provided.

43 (c) Safeguards. – A covered entity must have in place appropriate administrative,
44 technical, and physical safeguards to protect the privacy of protected health information.

1 (d) Complaints. – A covered entity must provide a process for individuals to
2 make complaints concerning the covered entity's policies and procedures required by
3 this Article or its compliance with required policies and procedures.

4 (e) Sanctions. – A covered entity must have and apply appropriate sanctions
5 against members of its workforce who fail to comply with the privacy policies and
6 procedures of the covered entity or the requirements of this Article.

7 (f) Mitigation. – A covered entity must mitigate, to the extent practicable, any
8 harmful effect that is known to the covered entity of a use or disclosure of protected
9 health information in violation of its policies and procedures or the requirements of this
10 Article.

11 (g) Retaliation. – A covered entity may not intimidate, threaten, coerce,
12 discriminate against, or take other retaliatory action against an individual or other
13 persons for filing a complaint or otherwise assisting in an investigation into the covered
14 entity's compliance with this Article.

15 (h) Waiver of Right. – A covered entity may not require individuals to waive
16 their rights under this Article as a condition of the treatment, payment, enrollment in a
17 health plan or eligibility for benefits.

18 (i) Policies and Procedures. – A covered entity must implement policies and
19 procedures with respect to protected health information that are designed to comply
20 with the requirements of this Article.

21 (j) Documentation. – A covered entity must maintain:

22 (1) Policies and procedures required under this Article in written or
23 electronic form;

24 (2) Communications required to be maintained in writing, or an electronic
25 copy of the writing, as documentation of the writing; and

26 (3) Written or electronic record of actions, activities, or designations
27 required by this Article.

28 A covered entity must retain the document required by this subsection for six
29 years from the date of its creation or the date when it was last in effect,
30 whichever is later."

31 **SECTION 2.** This act becomes effective January 1, 2002.