

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

SENATE BILL NO. 424

BY: HENDRICK

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY;
PROVIDING SHORT TITLE; STATING LEGISLATIVE
FINDINGS; DEFINING TERMS; PROHIBITING DISCLOSURE OF
CERTAIN INFORMATION WITH EXCEPTIONS; REQUIRING
CERTAIN RECORD; PROVIDING FOR AUTHORIZATION AND
REVOCAION OF AUTHORIZATION FOR DISCLOSURE;
PROVIDING FOR DISCLOSURE WITHOUT CERTAIN
AUTHORIZATION; PROHIBITING DISCLOSURE UNDER CERTAIN
PROCESS AND PROVIDING EXCEPTIONS; PROVIDING FOR
METHOD OF CERTAIN PROCESS; ESTABLISHING PROCEDURES
FOR CERTAIN ACTIVITIES;
PROVIDING FOR DENIAL OF CERTAIN ACTIVITIES; PROVIDING
FOR CORRECTION, AMENDMENT OR DISSEMINATION OF
CERTAIN RECORD; PROVIDING FOR HEALTH CARE
REPRESENTATIVES; REQUIRING CERTAIN SAFEGUARDS AND
MAINTENANCE OF RECORDS; PROVIDING PENALTIES;
PROVIDING FOR ENFORCEMENT OF ACT; PROVIDING FOR
CIVIL REMEDIES; PROVIDING FOR CODIFICATION;
PROVIDING FOR NONCODIFICATION; REPEALING 76 O.S.
1981, SECTION 19, AS LAST AMENDED BY SECTION 2,
CHAPTER 168, O.S.L. 1987 AND 20 (76 O.S. SUPP.

1990, SECTION 19), WHICH RELATE TO TORTS; AND
PROVIDING AN EFFECTIVE DATE.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4301 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Uniform Health Care Information Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4302 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Legislature finds that:

1. Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care or other interests;

2. 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;

3. In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information;

4. Persons other than health care providers obtain, use and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state

that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers; and

5. The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergency of multistate health care providers creates a compelling need for uniform law, rules and procedures governing the use and disclosure of health care information.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4303 of Title 63 unless there is created a duplication in numbering, reads as follows:

As used in this act unless the context otherwise requires:

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

- a. statutory, regulatory, fiscal, medical or scientific standards,
- b. a private or public program of payments to a health care provider, or
- c. requirements for licensing, accreditation or certification;

2. "Directory information" means information disclosing the presence and the general health condition of a particular patient who is an inpatient in a health care facility or who is currently receiving emergency health care in a health care facility;

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

4. "Health care" means any care, service or procedure provided by a health care provider:

- a. to diagnose, treat or maintain a patient's physical or mental condition, or
- b. that affects the structure or any function of the human body;

5. "Health care facility" means a hospital, clinic, nursing home, laboratory, office or similar place where a health care provider provides health care to patients;

6. "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and relates to the patient's health care. The term includes any record of disclosures of health care information;

7. "Health care provider" means a person who is licensed, certified or otherwise authorized by the laws of this state to provide health care in the ordinary course of business or practice of a profession. The term does not include a person who provides health care solely through the sale or dispensing of drugs or medical services;

8. "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;

9. "Maintain", as related to health care information, means to hold, possess, preserve, retain, store or control that information;

10. "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care;

11. "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity; and

12. "Reasonable costs" means fifteen cents (\$.15) per page plus actual postage, if applicable, and no other costs.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4304 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Except as authorized in Section 7 of this act, a health care provider, an individual who assists a health care provider in the delivery of health care or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

B. A health care provider shall maintain, in conjunction with a patient's recorded health care information, a record of each person who has received or examined, in whole or in part, the recorded health care information during the next preceding three (3) years, except for a person who has examined the recorded health care information under paragraph 1 or 2 of subsection A of Section 7 of this act. The record of disclosure must include the name, address and institutional affiliation, if any, of each person receiving or examining the recorded health care information, the date of the receipt or examination and, to the extent practicable, a description of the information disclosed.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4305 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under Section 10 of this act.

B. A health care provider may assess a reasonable cost for providing the health care information and shall not be required to honor an authorization until the cost is paid.

C. To be valid, a disclosure authorization to a health care provider must:

1. Be in writing, dated and signed by the patient;
2. Identify the nature of the information to be disclosed; and
3. Identify the person to whom the information is to be disclosed.

D. Except as provided by this act, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence or common law.

E. A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made.

F. Except for authorizations to provide information to third-party health care payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than six (6) months after the authorization was signed.

G. An authorization in effect on the effective date of this act shall remain valid for thirty (30) months after the effective date of this act unless an earlier date is specified or it is revoked under Section 6 of this act. Health care information disclosed under such an authorization shall otherwise be subject to this act. An authorization written after the effective date of this act shall become invalid after the expiration date contained in the authorization, which may not exceed thirty (30) months. If the authorization does not contain an expiration date, it shall expire six (6) months after it is signed.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4306 of Title 63, unless there is created a duplication in numbering, reads as follows:

A patient may revoke a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good faith reliance on an authorization if the health care provider had no notice of the revocation of the authorization.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4307 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

1. To a person who is providing health care to a patient;
2. To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial or actuarial services to the health care provider, or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:
 - a. will not use or disclose the health care information for any other purpose, and
 - b. will take appropriate steps to protect the health care information;

3. To any other health care provider who has previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider not to make the disclosure;

4. To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual;

5. To immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider not to make the disclosure;

6. To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

7. For use in a research project that an institutional review board has determined:

- a. is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure,
- b. is impracticable without the use or disclosure of the health care information in individually identifiable form,
- c. contains reasonable safeguards to protect the information from redisclosure,
- d. contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project, and
- e. contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

8. To a person who obtains information for purposes of an audit, if that person agrees in writing to:

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

9. To an official of a penal or other custodial institution in which the patient is detained.

B. A health care provider may disclose health care information about a patient without the patient's authorization if the disclosure is:

1. Directory information, unless the patient has instructed the health care provider not to make the disclosure;

2. To federal, state or local public health authorities, to the extent the health care provider is required by law to report health care information or when needed to protect the public health;

3. To federal, state or local law enforcement authorities to the extent required by law; or

4. Pursuant to compulsory process in accordance with Section 8 of this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4308 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Health care information may not be disclosed by a health care provider pursuant to compulsory legal process or discovery in any judicial, legislative or administrative proceeding unless:

1. The patient has consented in writing to the release of the health care information in response to compulsory process or a discovery request;

2. The patient has waived the right to claim confidentiality for the health care information sought;

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

4. The patient's physical or mental condition 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. A patient's health care information is to be used in the patient's commitment proceeding;

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; but, health care information so obtained may not be used in any proceeding against the patient unless the matter relates to payment for the patients's health care, or unless authorized under paragraph 9 of this subsection;

8. The health care information is relevant to a proceeding brought under Section 19 of this act; or

9. A court has determined that particular health care information is subject to compulsory legal process or discovery because the party seeking the information has demonstrated that the interest in access outweighs the patient's privacy interest.

B. Unless the court, 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 under paragraph 9 of subsection A of this section, the person seeking discovery or compulsory process shall mail a notice by first-class mail to the patient or the patient's attorney of record of the compulsory process or discovery request at least ten (10) days

before presenting the certificate required under subsection C of this section to the health care provider.

C. Service of compulsory process or discovery requests upon a health care provider must be accompanied by a written certification, signed by the person seeking to obtain health care information, or his authorized representative, identifying at least one paragraph of subsection A under which compulsory process or discovery is being sought. The certification must also state, in the case of information sought under paragraph 2, 4 or 5 of subsection A of this section, or in a civil proceeding under paragraph 9 of subsection A of this section that the requirements of subsection B of this section for notice have been met. A person may sign the certification only if the person reasonably believes that the paragraph of subsection A of this section identified in the certification provides an appropriate basis for the use of discovery or compulsory process. Unless otherwise ordered by the court, the health care provider shall maintain a copy of the process and the written certification as a permanent part of the patient's health care information.

D. Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection or defense existing under other law or rule of evidence or procedure.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4309 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than ten (10) days after receiving the request shall:

1. Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

2. Inform the patient if the information does not exist or cannot be found;

3. If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

4. If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one (21) days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

5. Deny the request, in whole or in part, under Section 10 of this act and inform the patient.

B. Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable cost for providing the health care information and shall not be required to permit examination or copying until the cost is paid.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4310 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

1. Knowledge of the health care information would be injurious to the health of the patient;

2. Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

3. Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

4. The health care information was compiled and is used solely for litigation, quality assurance, peer review or administrative purposes; or

5. Access to the health care information is otherwise prohibited by law.

B. If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection A of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

C. If a health care provider denies a patient's request for examination and copying, in whole or in part, under paragraph 1 or 3 of subsection A of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified or otherwise authorized under the laws of this state to treat the patient for the same condition as the health care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4311 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under Section 9 of this act.

B. As promptly as required under the circumstances, but no later than ten (10) days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

1. Make the requested correction or amendment and inform the patient of the action and of the patient's right to have the correction or amendment sent to previous recipients of the health care information in question;

2. Inform the patient if the record no longer exists or cannot be found;

3. If the health care provider does not maintain the record, inform the patient and provide the patient with the name and addresses, if known, of the person who maintains the record;

4. If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one (21) days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

5. Inform the patient in writing of the provider's refusal to correct or amend the record as requested, the reason for the refusal and the patient's right to add a statement of disagreement and to have that statement sent to previous recipients of the disputed health care information.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4312 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In making a correction or amendment, the health care provider shall:

1. Add the amending information as a part of the health record; and

2. Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

B. If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

1. Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

2. Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4313 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider, upon request of a patient, shall take reasonable steps to provide copies of corrected or amended information or of a statement of disagreement to all persons designated by the patient and who are identified in the health care information as having examined or received copies of the information sought to be corrected or amended.

B. A health care provider may charge the patient a reasonable fee, not exceeding the provider's actual cost, for distributing

corrected or amended information or the statement of disagreement, unless the provider's error necessitated the correction or amendment.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4314 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at _____."

B. The health care provider shall post a copy of the notice of information practices in a conspicuous place in the health care facility and, upon request, provide patients or prospective patients with a copy of the notice.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4315 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person authorized to consent to health care for another may exercise the rights of that person under this act, to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under the laws of this state, only the minor may exercise the rights of a patient under

this act, as to information pertaining to health care to which the minor lawfully consented.

B. A person authorized to act for a patient shall act in good faith to represent the best interests of the patient.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4316 of Title 63, unless there is created a duplication in numbering, reads as follows:

A personal representative of a deceased patient may exercise all of the deceased patient's rights under this act. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this act may be exercised by persons who are authorized by law to act for the deceased patient.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4317 of Title 63, unless there is created a duplication in numbering, reads as follows:

A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4318 of Title 63, unless there is created a duplication in numbering, reads as follows:

A health care provider shall maintain a record of existing health care information for at least one (1) year following receipt of an authorization to disclose that health care information under Section 5 of this act, and during the pendency of a request for examination and copying under Section 9 of this act or a request for correction or amendment under Section 11 of this act.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4319 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who willfully discloses health care information in violation of this act, and who knew or should have known that

disclosure is prohibited, shall be guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or imprisonment for a period not exceeding one (1) year, or both such fine and imprisonment.

B. A person who, by means of:

1. Bribery;

2. Theft;

3. Misrepresentation of identity, purpose of use or entitlement to the information; or

4. Trespass,

examines or obtains, in violation of this act, health care information maintained by a health care provider, is guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or imprisonment for a period not exceeding one (1) year, or both such fine and imprisonment.

C. A person who, knowing that a certification under Section 8 of this act or a disclosure authorization under Section 5 of this act is false, willfully presents the certification or disclosure authorization to a health care provider, is guilty of a misdemeanor, and upon conviction is punishable by a fine not exceeding Ten Thousand Dollars (\$10,000.00) or imprisonment for a period not exceeding one (1) year, or both such fine and imprisonment.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4320 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Attorney General or appropriate local law enforcement official may maintain a civil action to enforce this act. The court may order any relief authorized by Section 21 of this act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 4321 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person aggrieved by a violation of this act may maintain an action for relief as provided in this section.

B. The court may order the health care provider or other person to comply with this act and may order any other appropriate relief.

C. A health care provider who relies in good faith upon a certification, pursuant to Section 8 of this act, shall not be liable for disclosures made in reliance on that certification.

D. In an action by a patient alleging that health care information was improperly withheld under Section 10 of this act the burden of proof is on the health care provider to establish that the information was properly withheld.

E. If the court determines that there is a violation of this act, the aggrieved person shall be entitled to recover damages for pecuniary losses sustained as a result of the violation; and, in addition, if the violation results from willful or grossly negligent conduct, the aggrieved person may recover not in excess of Five Thousand Dollars (\$5,000.00), exclusive of any pecuniary loss.

F. If a plaintiff prevails, the court may assess reasonable attorney's fees and all other expenses reasonably incurred in the litigation.

G. Any action under this act is barred unless the action is commenced within two (2) years after the cause of action accrues.

SECTION 22. REPEALER 76 O.S. 1981, Sections 19, as last amended by Section 2, Chapter 168, O.S.L. 1987 and 20 (76 O.S. Supp. 1990, Section 19), are hereby repealed.

SECTION 23. This act does not affect other law restricting, to a greater extent than does this act, the disclosure of specific types of health care information to any person other than the patient to whom it relates.

SECTION 24. This act does not restrict a health care provider from complying with obligations imposed by federal health care payment programs or federal law.

SECTION 25. The provisions of Sections 23 and 24 of this act shall not be codified in the Oklahoma Statutes.

SECTION 26. This act shall become effective September 1, 1991.

43-1-510 BPR