

A SUMMARY OF HOUSE BILL 4294 AS INTRODUCED 2-23-99

The bill would create the “Health Care Information Act”, which would regulate a patient’s access to his or her medical records. The bill would establish a procedure by which a patient; his or her guardian, patient advocate, conservator, or other legal representative; or the parents or guardians of a minor would have the right to inspect and copy the patient’s health care information. “Health care information” would be defined as information that identified a patient and was related to his or her health care. Health care information would include medical histories, records, reports, summaries, diagnoses and prognoses, treatments and medications, and so on. It would not include such information as business records pertaining to patients’ accounts, nursing or physician audits, mental health records, and evaluations and audits conducted by the Departments of Community Health and Consumer and Industry Services.

Obtaining medical information. Under the bill, a patient or other person having right of access could request, either orally or in writing, access to the patient’s health care information from the health care provider or facility that maintained the records. A “health care provider” would include licensed or registered health care professionals but would not include pharmacists, psychiatrists, psychologists, social workers, or professional counselors who provide only mental health services. A “health care facility” would include facilities and agencies licensed under Article 17 of the Public Health Code or any other organized entity where a health care provider provided health care to patients. “Maintained” would be defined as holding, possessing, preserving, retaining, storing, or controlling health care information. Within 15 business days of receiving the request for information, the provider or facility would have to do one of the following:

--Make the information available for inspection or copying at the provider’s or facility’s place of business during regular business hours, or, provide a copy of the requested material to the patient.

--If the provider or facility contracted with another company to maintain patients’ medical files, the provider or facility would have to transmit the request and retrieve the requested material from the company and then make it available to the patient.

--Inform the patient if the medical records cannot be found or do not exist.

--If the medical records are held by a company that the provider or facility does not have a contract with, the patient would have to be informed and provided with the name and address, if known, of the company holding the information.

--If, during the allowable response time, a provider was unavailable, the patient would have to be informed of the provider's unavailability and the request would have to be filled within 15 business days after the provider became available.

Fees. Charges for supplying the information would be limited to a retrieval fee of no more than \$5.00 per request and a copying fee of no more than 7 cents per one side of a page. If the information were mailed, a charge could only be for the actual cost of the postage incurred. The actual cost of copying imaging records such as x-rays could also be charged. Payment of the charges could be required before the information was released to a patient. All fees would have to be waived for patients receiving certain forms of state or federal assistance, such as Medicaid, that are based on disability or income status.

Penalties. The Department of Consumer and Industry Services would be required to impose administrative sanctions on a health care provider or facility for violations of the bill in the same manner that sanctions are imposed under Article 15 and Article 17 of the Public Health Code. However, the sanctions would be limited to a reprimand, restitution, or a fine of not more than \$500 per violation for a health care provider and a fine of not more than \$500 per violation for a health care facility. Either the department or the patient could seek injunctive relief through the state attorney general or the county prosecutor having jurisdiction. The circuit court in which a petition is filed could restrain and enjoin a violation of the bill or could compel compliance with the bill's requirements. Further, a patient or his or her agent could bring a civil action for damages against a provider or facility for a violation. The greater of actual damages or \$250 could be awarded, along with reasonable attorney fees and costs.

Miscellaneous provisions. A health care provider or facility would be prohibited from asking questions as to why a patient was requesting access to his or her files. The right of access could be granted by a patient (or his or her guardian, etc.) to a third party payer such as a health insurer, or any other person the patient entered into a contract with or who had a right under common law to obtain the health care information. Further, a health care provider or facility that maintained patients' health care information would have to create a "notice of information practices" as prescribed by the bill and post it in a conspicuous place that was accessible by patients.

Analyst: S. Stutzky

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.