

1 **State of Arkansas**  
2 **79th General Assembly**  
3 **Regular Session, 1993**  
4 **By: Senator Walters**

# A Bill

**SENATE BILL 648**

## For An Act To Be Entitled

"AN ACT REGULATING THE CONFIDENTIALITY AND DISCLOSURE OF  
HEALTH-CARE INFORMATION."

## Subtitle

"AN ACT REGULATING THE CONFIDENTIALITY AND DISCLOSURE OF  
HEALTH-CARE INFORMATION."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

### SECTION 1. Legislative Findings.

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.

(5) The movement of patients and their health-care information across

1 state lines, access to and exchange of health-care information from automated  
2 data banks, and the emergence of multi-state health-care provides creates a  
3 compelling need for uniform law, rules, and procedures governing the use and  
4 disclosure of health-care information.

5

6 SECTION 2. Definitions.

7 As used in this Act unless the context otherwise requires:

8 (1) "Audit" means an assessment, evaluation, determination, or  
9 investigation of a health-care provider by a person not employed by or  
10 affiliated with the provider to determine compliance with:

11 (i) statutory, regulatory, fiscal, medical, or scientific  
12 standards;

13 (ii) a private or public program of payments to a health-care  
14 provider; or

15 (iii) requirements for licensing, accreditation, or certification.

16 (2) "Directory information" means information disclosing the presence  
17 and the general health condition of a particular patient who is an in-patient  
18 in a health-care facility or who is currently receiving emergency health care  
19 in a health-care facility.

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

23 (4) "Health care" means any care, service, or procedure provided by a  
24 health-care provider:

25 (i) to diagnose, treat, or maintain a patient's physical or mental  
26 condition, or

27 (ii) that affects the structure or any function of the human body.

28 (5) "Health-care facility" means a hospital, clinic, nursing home,  
29 laboratory, office, or similar place where a health-care provider provides  
30 health care to patients.

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

35 (7) "Health-care provider" means a person who is licensed, certified, or

1 otherwise authorized by the law of this State to provide health care in the  
2 ordinary course of business or practice of a profession. The term does not  
3 include a person who provides health care solely through the sale or  
4 dispensing of drugs or medical devices.

5 (8) "Institutional review board" means any board, committee, or other  
6 group formally designated by an institution, or authorized under federal or  
7 state law, to review, approve the initiation of, or conduct periodic review of  
8 research programs to assure the protection of the rights and welfare of human  
9 research subjects.

10 (9) "Maintain," as related to health-care information, means to hold,  
11 possess, preserve, retain, store, or control that information.

12 (10) "Patient" means an individual who receives or has received health  
13 care. The term includes a deceased individual who has received health care.

14 (11) "Person" means an individual, corporation, estate, trust,  
15 partnership, association, joint venture, government, governmental subdivision  
16 or agency, or any other legal or commercial entity.

17

18 SECTION 3. Disclosure by Health-Care Provider.

19 (a) Except as authorized in Section 6, a health-care provider, an  
20 individual who assists a health-care provider in the delivery of health care,  
21 or an agent and employee of a health-care provider may not disclose health-  
22 care information about a patient to any other person without the patient's  
23 written authorization. A disclosure made under a patient's written  
24 authorization must conform to the authorization.

25 (b) A health-care provider shall maintain, in conjunction with a  
26 patient's recorded health-care information, a record of each person who has  
27 received or examined, in whole or in part, the recorded health-care  
28 information during the next preceding three years, except for a person who has  
29 examined the recorded health-care information under paragraph (1) or (2) of  
30 Section 6 (a). The record of disclosure must include the name, address, and  
31 institutional affiliation, if any, of each person receiving or examining the  
32 recorded health-care information, the date of the receipt or examination, and,  
33 to the extent practicable, a description of the information disclosed.

34

35 SECTION 4. Patient Authorization to Health-Care Provider for

1 Disclosure.

2 (a) A patient may authorize a health-care provider to disclose the  
3 patient's health-care information. A health-care provider shall honor an  
4 authorization and, if requested, provide a copy of the recorded health-care  
5 information unless the health-care provider denies the patient access to  
6 health-care information under Section 9.

7 (b) A hospital may charge a reasonable fee, not to exceed the hospital's  
8 actual cost for providing the health-care information, and is not required to  
9 honor an authorization until the fee is paid. Other health-care facilities  
10 and health-care providers may charge fees for production and copying of  
11 health-care information as provided in Ark. Code Ann. §16-46-106.

12 (c) To be valid, a disclosure authorization to a health-care provider  
13 must:

- 14 (1) be in writing, dated, and signed by the patient;  
15 (2) identify the nature of the information to be disclosed;  
16 (3) identify the person to whom the information is to be  
17 disclosed.

18 (d) Except as provided by this Act, the signing of an authorization by a  
19 patient is not a waiver of any rights a patient has under other statutes, the  
20 rules of evidence, or common law.

21 (e) A health-care provider shall retain each authorization or revocation  
22 in conjunction with any health-care information from which disclosures are  
23 made.

24 (f) Except for authorizations to provide information to third-party  
25 health-care payors, an authorization may not permit the release of health-care  
26 information relating to future health care that the patient receives more than  
27 6 months after the authorization was signed.

28 (g) An authorization in effect on the effective date of this Act remains  
29 valid for 30 months after the effective date of the Act unless an earlier date  
30 is specified or it is revoked under Section 5. Health-care information  
31 disclosed under such an authorization is otherwise subject to this Act. An  
32 authorization written after the effective date of this Act becomes invalid  
33 after the expiration date contained in the authorization, which may not exceed  
34 30 months. If the authorization does not contain an expiration date, it  
35 expires six months after it is signed.

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2       SECTION 5. Patient's Revocation of Authorization for Disclosure.

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

10

11       SECTION 6. Disclosure Without Patient's Authorization.

12       (a) A health-care provider may disclose health-care information about a  
13 patient without a patient's authorization to the extent the health care  
14 provider reasonably believes the recipient needs to know the information, if  
15 the disclosure is:

16               (1) to a person who is providing health-care to the patient;

17               (2) to any other person who requires health-care information for  
18 health-care education, or to provide planning, quality assurance, peer review,  
19 or administrative, legal, financial, or actuarial services to the health-care  
20 provider, or for assisting the health-care provider in the delivery of health  
21 care and the health-care provider reasonably believes that the person:

22                       (i) will not use or disclose the health-care information for  
23 any other purpose; and

24                       (ii) will take appropriate steps to protect the health-care  
25 information.

26               (3) to any other health-care provider who has previously provided  
27 health care to the patient, to the extent necessary to provide health care to  
28 the patient, unless the patient has instructed the health-care provider not to  
29 make the disclosure;

30               (4) to any person if the health-care provider reasonably believes  
31 that disclosure will avoid or minimize an imminent danger to the health or  
32 safety of the patient or any other individual;

33               (5) to immediate family members of the patient, or any other  
34 individual with whom the patient is known to have a close personal  
35 relationship, if made in accordance with good medical or other professional

1 practice, unless the patient has instructed the health-care provider not to  
2 make the disclosure;

3 (6) to a health-care provider who is the successor in interest to  
4 the health-care provider maintaining the health-care information;

5 (7) for use in a research project that an institutional review  
6 board has determined:

7 (i) is of sufficient importance to outweigh the intrusion  
8 into the privacy of the patient that would result from the disclosure;

9 (ii) is impracticable without the use or disclosure of the  
10 health-care information in individually identifiable form;

11 (iii) contains reasonable safeguards to protect the  
12 information from redisclosure;

13 (iv) contains reasonable safeguards to protect against  
14 identifying, directly or indirectly, any patient in any report of the research  
15 project; and

16 (v) contains procedures to remove or destroy at the earliest  
17 opportunity, consistent with the purposes of the project, information that  
18 would enable the patient to be identified, unless an institutional review  
19 board authorizes retention of identifying information for purposes of another  
20 research project;

21 (8) to a person who obtains information for purposes of an audit,  
22 if that person agrees in writing to:

23 (i) remove or destroy, at the earliest opportunity  
24 consistent with the purpose of the audit, information that would enable the  
25 patient to be identified; and

26 (ii) not to disclose the information further, except to  
27 accomplish the audit or report unlawful or improper conduct involving fraud in  
28 payment for health-care by a health-care provider or patient, or other  
29 unlawful conduct by the health-care provider;

30 (9) to an official of a penal or other custodial institution in  
31 which the patient is detained.

32 (b) A health-care provider may disclose health-care information about a  
33 patient without the patient's authorization if the disclosure is:

34 (1) directory information, unless the patient has instructed the  
35 health-care provider not to make the disclosure;

1           (2) to federal, state, or local public-health authorities, to the  
2 extent the health-care provider is required by law to report health-care  
3 information or when needed to protect the public health;

4           (3) to federal, state, or local law enforcement authorities to the  
5 extent required by law;

6           (4) pursuant to compulsory process in accordance with Section 7.

7           (c) Nothing in this section shall be construed to impose a duty not  
8 otherwise imposed by law on a health-care provider to disclose health-care  
9 information.

10

11           SECTION 7. Compulsory Process.

12           (a) Health-care information may not be disclosed by a health-care  
13 provider pursuant to compulsory legal process or discovery in any judicial or  
14 administrative proceeding unless:

15                 (1) the patient has consented in writing to the release of the  
16 health-care information in response to compulsory process or a discovery  
17 request;

18                 (2) the patient has waived the right to claim confidentiality for  
19 the health-care information sought;

20                 (3) the patient is a party to the proceeding and has placed his or  
21 her physical or mental condition in issue;

22                 (4) the patient's physical or mental condition is relevant to the  
23 execution or witnessing of a will;

24                 (5) the physical or mental condition of a deceased patient is  
25 placed in issue by any person claiming or defending through or as a  
26 beneficiary of the patient;

27                 (6) a patient's health-care information is to be used in the  
28 patient's commitment proceeding;

29                 (7) the health-care information is for use in any law enforcement  
30 proceeding or investigation in which a health-care provider is the subject or  
31 a party; but, health-care information so obtained may not be used in any  
32 proceeding, against the patient, unless the matter relates to payment for the  
33 patient's health care, or unless authorized under paragraph (9);

34                 (8) the health-care information is relevant to a proceeding  
35 brought under § 14; or

1           (9) a court has determined that particular health-care information  
2 is subject to compulsory legal process or discovery because the party seeking  
3 the information has demonstrated that the interest in access outweighs the  
4 patient's privacy interest.

5           (b) Production of health-care information under this section, in  
6 and of itself, does not constitute a waiver of any privilege, objection, or  
7 defense existing under other law or ruling of evidence or procedure.

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9           SECTION 8. Requirements and Procedures for Patient's Examination and  
10 Copying.

11          (a) Upon receipt of a written request from a patient to examine or copy  
12 all or part of the patient's recorded health-care information, a health-care  
13 provider, within a reasonable time under the circumstances, shall:

14               (1) provide a copy of the information to the patient;

15               (2) inform the patient if the information does not exist or cannot  
16 be found;

17               (3) if the health-care provider does not maintain a record of the  
18 information, inform the patient and provide the name and address, if known, of  
19 the health-care provider who maintains the record;

20               (4) if the information is in use or unusual circumstances have  
21 delayed handling the request, inform the patient and specify in writing the  
22 reasons for the delay and the earliest date when the information will be  
23 available for examination or copying or when the request will be otherwise  
24 disposed of; or

25               (5) deny the request, in whole or in part, under Section 9 and  
26 inform the patient.

27          (b) If a record of the particular health-care information requested is  
28 not maintained by the health-care provider in the requested form, the health-  
29 care provider is not required to create a new record or reformulate an  
30 existing record to make the health-care information available in the requested  
31 form. A hospital may charge a reasonable fee, not to exceed the health-care  
32 provider's actual cost, for providing the health-care information and is not  
33 required to permit examination or copying until the fee is paid. Other  
34 health-care facilities and health-care providers may charge fees for  
35 production and copying of health-care information as provided in Ark. Code



1 Ann. §16-46-106.

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3 SECTION 9. Denial of Examination and Copying.

4 (a) A health-care provider may deny access to health-care information by  
5 a patient if the health-care provider reasonably concludes that:

6 (1) knowledge of the health-care information would be injurious to  
7 the health of the patient;

8 (2) knowledge of the health-care information could reasonably be  
9 expected to lead to the patient's identification of an individual who provided  
10 the information in confidence and under circumstances in which confidentiality  
11 was appropriate;

12 (3) knowledge of the health-care information could reasonably be  
13 expected to cause danger to the life or safety of any individual;

14 (4) the health-care information was compiled and is used solely  
15 for litigation, quality assurance, peer review, or administrative purposes; or

16 (5) access to the health-care information is otherwise prohibited  
17 by law.

18 (b) If a health-care provider denies a request for examination and  
19 copying under this section, the provider, to the extent possible, shall  
20 segregate health-care information for which access has been denied under  
21 subsection (a) from information for which access cannot be denied and permit  
22 the patient to examine or copy the disclosable information.

23 (c) If a health-care provider denies a patient's request for examination  
24 and copying, in whole or in part, under paragraph (1), or (3) of subsection  
25 (a), the provider shall permit examination and copying of the record by  
26 another health-care provider, selected by the patient, who is licensed,  
27 certified, or otherwise authorized under the laws of this State to treat the  
28 patient for the same condition as the health-care provider denying the  
29 request. The health-care provider denying the request shall inform the  
30 patient of the patient's right to select another health-care provider under  
31 this subsection.

32

33 SECTION 10. Health-Care Representatives.

34 (a) A person authorized to consent to health-care for another may  
35 exercise the rights of that person under this Act to the extent necessary to

1 effectuate the terms or purposes of the grant of authority. If the patient is  
2 a minor and is authorized to consent to health care without parental consent  
3 under the laws of this State, only the minor may exercise the rights of a  
4 patient under this Act as to information pertaining to health care to which  
5 the minor lawfully consented.

6 (b) A person authorized to act for a patient shall act in good faith to  
7 represent the best interests of the patient.

8

9 SECTION 11. Representative of Deceased Patient.

10 A personal representative who has been appointed by a court of competent  
11 jurisdiction as the representative of the estate of a deceased patient may  
12 exercise all of the deceased patient's rights under this Act. If there is no  
13 personal representative, or upon discharge of the personal representative, a  
14 deceased patient's rights under this Act may be exercised by persons who are  
15 authorized by law to act for the deceased patient.

16

17 SECTION 12. Duty to Adopt Security Safeguards.

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

20

21 SECTION 13. Retention of Record.

22 A health-care provider shall maintain a record of existing health-care  
23 information for at least one year following receipt of an authorization to  
24 disclose that health-care information under Section 4 and during the pendency  
25 of a request for examination and copying under Section 8.

26

27 SECTION 14. Civil Remedies.

28 (a) A person aggrieved by a violation of this Act may maintain an action  
29 for relief as provided in this section.

30 (b) The court may order the health-care provider or other person to  
31 comply with this Act and may order any other appropriate relief.

32 (c) A health-care provider who relies in good faith upon an  
33 authorization, pursuant to Section (4), is not liable for disclosures made in  
34 reliance on that certification.

35 (d) In an action by a patient alleging that health-care information was

1 improperly withheld under Article III the burden of proof is on the health-  
2 care provider to establish that the information was properly withheld.

3 (e) If the court determines that there is a violation of this Act, the  
4 aggrieved person is entitled to recover damages for pecuniary losses sustained  
5 as a result of the violation; and, in addition, if the violation results from  
6 willful or grossly negligent conduct, the aggrieved person may recover not in  
7 excess of \$5,000, exclusive of any pecuniary loss.

8 (f) Any action under this Act is barred unless the action is commenced  
9 within 2 years after the claim for relief accrues.

10

11 SECTION 15. Uniformity of Application and Construction.

12 This Act shall be applied and construed to effectuate its general  
13 purpose to make uniform the law with respect to the subject of this Act among  
14 states enacting it.

15

16 SECTION 16. Short Title.

17 This Act may be cited as the Health-Care Information Act.

18

19 SECTION 17. Severability.

20 If any provision of this Act or its application to any person or  
21 circumstance is held invalid, the invalidity does not affect other provisions  
22 or applications of this Act which can be given effect without the invalid  
23 provision or application, and to this end the provisions of this Act are  
24 severable.

25

26 SECTION 18. Repeals.

27 The following acts and parts of acts are amended or repealed:

28 (1) Arkansas Code Annotated Section 16-46-106(a)(1) is amended to read  
29 as follows:

30 "In contemplation of, preparation for, or use in any legal proceeding,  
31 any person who is or has been a patient of a doctor or medical institution  
32 other than a hospital shall be entitled to obtain access, personally or by and  
33 through his or her attorney to information in his or her medical records  
34 maintained by such doctor or medical institution other than a hospital, upon  
35 request and with written patient authorization and shall be furnished copies

1 of all such medical records pertaining to his or her case upon tender of the  
2 expense of such copy or copies."

3 (2)Arkansas Code Annotated Section 16-46-106(b)(1) is repealed.

4 (3) However, nothing in this Act shall be construed to repeal Arkansas  
5 Code Annotated Section 16-46-301 thru 308."

6

7 SECTION 19. Saving Clause.

8 This Act does not affect other law restricting to a greater extent than  
9 does this Act, the disclosure of specific types of health-care information to  
10 any person other than the patient to whom it relates.

11

12 SECTION 20. Conflicting Laws.

13 This Act does not restrict a health-care provider from complying with  
14 obligations imposed by federal health-care payment programs or federal law.

15

16 SECTION 21. All provisions of this act of a general and permanent  
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas  
18 Code Revision Commission shall incorporate the same in the Code.

19

20 SECTION 22. If any provision of this act or the application thereof to  
21 any person or circumstance is held invalid, such invalidity shall not affect  
22 other provisions or applications of the act which can be given effect without  
23 the invalid provision or application, and to this end the provisions of this  
24 act are declared to be severable.

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26 SECTION 23. All laws and parts of laws in conflict with this act are  
27 hereby repealed.

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*/s/Senator Walters*