

SENATE, No. 42

STATE OF NEW JERSEY

INTRODUCED JANUARY 18, 1996

By Senators LITTELL and LaROSSA

1 AN ACT concerning health care information records and  
2 supplementing Titles 26 and 45 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. The Legislature finds and declares that:

8 a. Health care information is personal and sensitive information  
9 that, if improperly used or released, may do significant harm to a  
10 patient's interests in privacy and in health care, and may affect a  
11 patient's ability to obtain employment, education, insurance, credit and  
12 other necessities;

13 b. Patients need access to their own health care information as a  
14 matter of fairness to enable them to make informed decisions about  
15 their health care and to correct inaccurate or incomplete information  
16 about themselves;

17 c. Persons receiving, maintaining and distributing health care  
18 information need clear and certain rules for the handling, maintenance,  
19 dissemination and disclosure of health care information; and

20 d. Health care information is obtained, used and disclosed in many  
21 different contexts and for many different purposes, and a patient's  
22 interest in the proper use and disclosure of his personal health care  
23 information continues even when the information has been initially  
24 disclosed and is held by other persons.

25

26 2. As used in sections 1 through 10 of this act:

27 "Commissioner" means the Commissioner of Health.

28 "Health care" means any preventive, diagnostic, therapeutic,  
29 rehabilitative, maintenance or palliative care, counseling, service or  
30 procedure provided by a health care facility with respect to a patient's  
31 physical or mental condition, or affecting the structure or function of  
32 the human body or any part thereof, including, but not limited to, the  
33 banking of blood, sperm, organs or any other tissue, or a sale or  
34 dispensing of a drug, substance, device, equipment or other item to a  
35 patient or for a patient's use pursuant to a prescription.

36 "Health care facility" means a health care facility regulated by the

1 Department of Health pursuant to P.L.1971, c.136 (C.26:2H-1 et  
2 seq.).

3 "Health care information" means any data or information, whether  
4 oral or recorded in any form or medium, that identifies or can readily  
5 be associated with the identity of a patient and relates to a patient's  
6 health care, and is obtained in the course of a patient's health care from  
7 a health care facility, the patient, a member of the patient's family, a  
8 person with whom the patient has a close personal relationship, or a  
9 patient representative.

10 "Patient" means a person who receives or has received health care.

11 "Patient representative" means a person legally empowered to make  
12 decisions about a patient's health care on the patient's behalf or the  
13 administrator or executor of a deceased patient's estate.

14 "Record" means a patient's health care information record.

15

16 3. A health care facility is subject to the provisions of sections 1  
17 through 10 of this act, notwithstanding the provisions of any other law  
18 to the contrary, except as otherwise provided herein.

19

20 4. a. A record maintained by a health care facility is confidential  
21 and shall be disclosed only for the purposes authorized by this act.

22 b. A health care facility, in accordance with regulations adopted by  
23 the commissioner, shall develop and implement a written policy  
24 governing the confidentiality of records maintained by the facility. The  
25 policy shall include procedures designed to ensure the security of its  
26 records during storage, processing or transmission, either in electronic  
27 or other form, and shall stipulate that any person who is granted  
28 access to a record maintained by the facility shall have previously  
29 received and signed a form approved by the commissioner which  
30 explains the facility's written confidentiality policy and obligates the  
31 person to abide thereby.

32 c. The content of a record may be disclosed in accordance with the  
33 prior written authorization of the patient or patient representative, or  
34 if the patient is legally incompetent or deceased, in accordance with  
35 section 7 of this act, only if the authorization is provided on a form  
36 and in a manner approved by the commissioner and the purpose and  
37 period of time for which disclosure is authorized are clearly stated on  
38 the authorization form.

39 d. Except as otherwise provided in this act, the signing or  
40 authentication of a patient's or patient representative's authorization  
41 for disclosure shall be considered permission for disclosure only for  
42 the purposes explicitly contained in the authorization and shall not be  
43 considered a waiver of any rights a patient has under federal or State  
44 statute, court rule or common law.

45 e. If the patient's or patient representative's prior written  
46 authorization is not obtained, the record shall be disclosed only under

1 the following conditions, except that nothing in this subsection shall  
2 be construed to permit the disclosure of a record to a person, agency  
3 or other entity to whom disclosure is otherwise prohibited under State  
4 or federal law:

5 (1) To the patient or the patient representative;

6 (2) To a health care provider who is providing health care to the  
7 patient, except as the disclosure is limited or prohibited by the patient;

8 (3) To a member of the patient's immediate family, or to another  
9 person with whom the patient is known to have a close personal  
10 relationship, if the disclosure is made in accordance with good medical  
11 or other professional practice, except as the disclosure is limited or  
12 prohibited by the patient;

13 (4) To any person to the extent that person needs to know the  
14 information in the record, if the holder of the record believes that the  
15 disclosure will avoid or minimize imminent danger to the health or  
16 safety of the patient or any other person, or is necessary to alleviate  
17 emergency circumstances affecting the health or safety of any person;

18 (5) To federal, State or local government authorities, to the extent  
19 that the holder of the record is required by law to report specific  
20 health care information, when needed to determine compliance with  
21 State or federal licensure, certification or registration requirements, or  
22 when needed to protect the public health, including but not limited to  
23 the reporting of child abuse or neglect, or to identify a deceased  
24 patient based upon reasonable grounds that information in the record  
25 is needed to assist in the identification;

26 (6) To qualified personnel for the purpose of conducting scientific  
27 research, but a record shall be released for research only following  
28 review of the research protocol by an institutional review board  
29 constituted pursuant to federal regulation 45 C.F.R. § 46.101 et seq.;  
30 and the patient shall not be directly or indirectly identified in any  
31 report of the research and research personnel shall not disclose the  
32 person's identity in any manner;

33 (7) To qualified personnel for the purpose of conducting  
34 management audits, financial audits or program evaluation; but the  
35 personnel shall not directly or indirectly identify the patient in a report  
36 of an audit or evaluation, or otherwise disclose the patient's identity in  
37 any manner, and identifying information shall not be released to the  
38 personnel unless it is vital to the audit or evaluation;

39 (8) To qualified personnel involved in medical education or in the  
40 patient's diagnosis and treatment, except that disclosure is limited to  
41 personnel directly involved in medical education or in the patient's  
42 diagnosis and treatment;

43 (9) To the Department of Health, the Attorney General, the  
44 Division of Consumer Affairs in the Department of Law and Public  
45 Safety, or a professional or occupational board located within that  
46 division, as required by State or federal law;

1 (10) As permitted by rules and regulations adopted by the  
2 commissioner for the purposes of disease prevention and control; or

3 (11) In all other instances authorized by State or federal law.

4 f. A health care facility shall maintain as part of a record the  
5 following:

6 (1) information regarding each external disclosure of health care  
7 information in that record, including, but not limited to: the name,  
8 address and institutional affiliation, if any, of the person to whom the  
9 health care information is disclosed; the date and purpose of the  
10 disclosure; and, to the extent practicable, a description of the  
11 information disclosed; and

12 (2) authorization by a patient or patient representative for  
13 disclosure of health care information contained in the record and any  
14 revocation thereof by the patient or patient representative; or

15 (3) if authorization was not obtained by a patient or patient  
16 representative for disclosure of health care information contained in  
17 the record, the authorization upon which the information was  
18 disclosed.

19 g. The limits on disclosure set forth in this act shall continue to  
20 apply to a record after the patient is discharged from the health care  
21 facility.

22 h. A record disclosed under this act shall be held confidential by  
23 the recipient of the record and shall not be released by the recipient  
24 unless the conditions of this act are met.

25

26 5. A patient or patient representative has the right to:

27 a. have access to health care information concerning the patient;

28 b. receive a copy of health care information from the patient's  
29 record upon payment of a reasonable charge to a health care facility as  
30 determined by the commissioner;

31 c. have a notation made in the patient's record, upon the request of  
32 the patient or patient representative, which reflects: any amendment  
33 to, or correction of, the information in the record, or any such change  
34 proposed by the patient or patient representative with which the health  
35 care facility disagrees in regard to the accuracy of the record; and

36 d. revoke at any time the patient's or patient representative's  
37 authorization for disclosure of health care information contained in the  
38 record, unless the disclosure is required to effectuate payment for  
39 health care that has been provided to the patient, or other substantial  
40 action has been taken in reliance on that authorization.

41 A patient may not maintain an action against a health care facility  
42 or a person employed by a health care facility for disclosure of health  
43 care information made in good faith reliance on the patient's or patient  
44 representative's written authorization, if the facility or employee had  
45 no notice of the revocation at the time the disclosure was made.

1       6. a. A record may be disclosed by an order of a court of  
2 competent jurisdiction which is granted pursuant to an application  
3 showing good cause therefor. At a good cause hearing, the court shall  
4 weigh the public interest and need for disclosure against the injury to:  
5 the patient, the health care provider-patient relationship, or the  
6 services offered by the health care facility, and those provisions of  
7 State or federal law which are intended to assure the confidentiality of  
8 patient health care information. Upon the granting of the order, the  
9 court, in determining the extent to which a disclosure of all or any part  
10 of a record is necessary, shall impose appropriate safeguards to  
11 prevent an unauthorized disclosure.

12       b. A court may authorize disclosure of a patient's record for the  
13 purpose of conducting an investigation of, or a prosecution for, a  
14 crime of which the patient or other person identified in the record is  
15 suspected only if the crime is a first degree crime and there is a  
16 reasonable likelihood that the record in question will disclose material  
17 information or evidence of substantial value in connection with the  
18 investigation or prosecution; except that nothing in this subsection  
19 shall be construed to limit the provisions of the "New Jersey Insurance  
20 Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.), or to  
21 limit the authority of the Division of Youth and Family Services in the  
22 Department of Human Services with respect to the provisions of  
23 chapter 6 of Title 9 of the Revised Statutes.

24       c. Except as provided in subsections a. and b. of this section, a  
25 record shall not be used to initiate or substantiate any criminal or civil  
26 charges against the patient or other person identified in the record or  
27 to conduct an investigation of that person.

28       d. The court shall deny an application for disclosure of a record  
29 unless the court makes a specific finding that the health care facility  
30 and the patient or patient representative were afforded the opportunity  
31 to be represented at the hearing.

32       e. Nothing in this section shall be construed to authorize disclosure  
33 of any confidential communication which is otherwise protected by  
34 statute, court rule or common law.

35  
36       7. a. When authorization is required for disclosure of the record  
37 of a deceased or legally incompetent patient, the authorization shall be  
38 obtained:

39       (1) From an executor, administrator of the estate, or patient  
40 representative;

41       (2) From the patient's spouse or primary caretaking partner or, if  
42 none, by another member of the patient's family; or

43       (3) From the commissioner in the event that a deceased patient has  
44 neither an authorized representative or next-of-kin.

45       b. When authorization is required for disclosure of the record of a  
46 minor, it shall be obtained from the parent, guardian, or other

1 individual authorized under State law to act in the minor's behalf.

2

3 8. a. If a health care facility or a person employed by a health care  
4 facility, or a person who is granted access to a record maintained by  
5 the facility, fails to comply with the provisions of this act, a patient or  
6 other person whose rights are violated may apply to the Superior  
7 Court of this State, or any other court of competent jurisdiction, for  
8 appropriate equitable relief.

9 b. A health care facility or a person employed by a health care  
10 facility, or a person who is granted access to a record maintained by  
11 the facility, which discloses health care information in violation of the  
12 provisions of this act shall be liable for damages sustained by the  
13 person about whom the information relates.

14 c. Each disclosure of a record made in violation of the provisions  
15 of this act is a separate and actionable offense.

16 d. In an action brought pursuant to this section, the court may  
17 award the costs of the action and reasonable attorney's fees to the  
18 prevailing party.

19 e. An action under this section shall be brought within two years  
20 from the date that the alleged violation is or should have been  
21 discovered.

22

23 9. a. A person who, under false or fraudulent pretenses, requests  
24 or obtains health care information from a health care facility or a  
25 person employed by a health care facility, or requests or obtains a  
26 patient's authorization for disclosure of that information, is guilty of  
27 a crime of the fourth degree.

28 b. A person who, under false or fraudulent pretenses, requests or  
29 obtains health care information from a health care facility or a person  
30 employed by a health care facility and intentionally uses, sells or  
31 transfers that information for remuneration, profit or monetary gain,  
32 is guilty of a crime of the second degree.

33 c. A person who unlawfully takes health care information from a  
34 health care facility or a person employed by a health care facility and  
35 intentionally uses, sells or transfers that information for remuneration,  
36 profit or monetary gain, is guilty of a crime of the second degree.

37

38 10. Nothing in sections 1 through 9 of this act shall be construed  
39 to limit a person's immunity from liability for civil damages in  
40 accordance with the provisions of section 1 of P.L.1983, c.248  
41 (C.45:9-19.1).

42

43 11. The commissioner, pursuant to the "Administrative Procedure  
44 Act," P.L. 1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and  
45 regulations to effectuate the purposes of sections 1 through 10 of this  
46 act.

1       12. As used in sections 12 through 21 of this act:

2       "Director" means the Director of the Division of Consumer Affairs  
3 in the Department of Law and Public Safety.

4       "Health care" means any preventive, diagnostic, therapeutic,  
5 rehabilitative, maintenance or palliative care, counseling, service or  
6 procedure provided by a health care provider with respect to a  
7 patient's physical or mental condition, or affecting the structure or  
8 function of the human body or any part thereof, including, but not  
9 limited to, the banking of blood, sperm, organs or any other tissue, or  
10 a sale or dispensing of a drug, substance, device, equipment or other  
11 item to a patient or for a patient's use pursuant to a prescription.

12       "Health care information" means any data or information, whether  
13 oral or recorded in any form or medium, that identifies or can readily  
14 be associated with the identity of a patient or other subject of record  
15 and relates to a patient's health care, and is obtained in the course of  
16 a patient's health care from a health care provider, the patient, a  
17 member of the patient's family, a person with whom the patient has a  
18 close personal relationship, or the patient's legal representative.

19       "Health care provider" means a health care provider subject to  
20 regulation by a professional board pursuant to the provisions of Title  
21 45 of the Revised Statutes.

22       "Patient" means a person who receives or has received health care.

23       "Patient representative" means a person legally empowered to make  
24 decisions about a patient's health care on the patient's behalf or the  
25 administrator or executor of a deceased patient's estate.

26       "Record" means a patient's health care information record.

27

28       13. A health care provider is subject to the provisions of sections  
29 12 through 21 of this act, notwithstanding the provisions of any other  
30 law to the contrary, except as otherwise provided herein.

31

32       14. a. A record maintained by a health care provider is confidential  
33 and shall be disclosed only for the purposes authorized by this act.

34       b. A health care provider, in accordance with regulations adopted  
35 by the director, shall develop and implement a written policy  
36 governing the confidentiality of records maintained by the provider.  
37 The policy shall include procedures designed to ensure the security of  
38 the provider's records during storage, processing or transmission,  
39 either in electronic or other form, and shall stipulate that any person  
40 who is granted access to a record maintained by the provider shall  
41 have previously received and signed a form approved by the director  
42 which explains the provider's written confidentiality policy and  
43 obligates the person to abide thereby.

44       c. The content of a record may be disclosed in accordance with the  
45 prior written authorization of the patient or patient representative, or  
46 if the patient is legally incompetent or deceased, in accordance with

1 section 17 of this act, only if the authorization is provided on a form  
2 and in a manner approved by the director and the purpose and period  
3 of time for which disclosure is authorized are clearly stated on the  
4 authorization form.

5 d. Except as otherwise provided in this act, the signing or  
6 authentication of a patient's or patient representative's authorization  
7 for disclosure shall be considered permission for disclosure only for  
8 the purposes explicitly contained in the authorization and shall not be  
9 considered a waiver of any rights a patient has under federal or State  
10 statute, court rule or common law.

11 e. If the patient's or patient representative's prior written  
12 authorization is not obtained, the record shall be disclosed only under  
13 the following conditions, except that nothing in this subsection shall  
14 be construed to permit the disclosure of a record to a person, agency  
15 or other entity to whom disclosure is otherwise prohibited under State  
16 or federal law:

17 (1) To the patient or the patient representative;

18 (2) To another health care provider who is providing health care  
19 to the patient, except as the disclosure is limited or prohibited by the  
20 patient;

21 (3) To a member of the patient's immediate family, or to another  
22 person with whom the patient is known to have a close personal  
23 relationship, if the disclosure is made in accordance with good medical  
24 or other professional practice, except as the disclosure is limited or  
25 prohibited by the patient;

26 (4) To any person to the extent that person needs to know the  
27 information in the record, if the holder of the record believes that the  
28 disclosure will avoid or minimize imminent danger to the health or  
29 safety of the patient or any other person, or is necessary to alleviate  
30 emergency circumstances affecting the health or safety of any person;

31 (5) To federal, State or local government authorities, to the extent  
32 that the holder of the record is required by law to report specific  
33 health care information, when needed to determine compliance with  
34 State or federal licensure, certification or registration requirements, or  
35 when needed to protect the public health, including but not limited to  
36 the reporting of child abuse or neglect, or to identify a deceased  
37 patient based upon reasonable grounds that information in the record  
38 is needed to assist in the identification;

39 (6) To qualified personnel for the purpose of conducting scientific  
40 research, but a record shall be released for research only following  
41 review of the research protocol by an institutional review board  
42 constituted pursuant to federal regulation 45 C.F.R. § 46.101 et seq. ;  
43 and the patient shall not be directly or indirectly identified in any  
44 report of the research and research personnel shall not disclose the  
45 person's identity in any manner;

46 (7) To qualified personnel for the purpose of conducting

1 management audits, financial audits or program evaluation; but the  
2 personnel shall not directly or indirectly identify the patient in a report  
3 of an audit or evaluation, or otherwise disclose the patient's identity in  
4 any manner, and identifying information shall not be released to the  
5 personnel unless it is vital to the audit or evaluation;

6 (8) To qualified personnel involved in medical education or in the  
7 patient's diagnosis and treatment, except that disclosure is limited to  
8 personnel directly involved in medical education or in the patient's  
9 diagnosis and treatment;

10 (9) To the Department of Health, the Attorney General, the  
11 Division of Consumer Affairs in the Department of Law and Public  
12 Safety, or a professional or occupational board located within that  
13 division, as required by State or federal law;

14 (10) As permitted by rules and regulations adopted by the  
15 Commissioner of Health for the purposes of disease prevention and  
16 control; or

17 (11) In all other instances authorized by State or federal law.

18 f. A health care provider shall maintain as part of a record the  
19 following:

20 (1) information regarding each external disclosure of health care  
21 information in that record, including, but not limited to: the name,  
22 address and institutional affiliation, if any, of the person to whom the  
23 health care information is disclosed; the date and purpose of the  
24 disclosure; and, to the extent practicable, a description of the  
25 information disclosed; and

26 (2) authorization by a patient or patient representative for  
27 disclosure of health care information contained in the record and any  
28 revocation thereof by the patient or patient representative; or

29 (3) if authorization was not obtained by a patient or patient  
30 representative for disclosure of health care information contained in  
31 the record, the authorization upon which the information was  
32 disclosed.

33 g. The limits on disclosure set forth in this act shall continue to  
34 apply to a record after the patient is no longer receiving health care  
35 services from the health care provider.

36 h. A record disclosed under this act shall be held confidential by  
37 the recipient of the record and shall not be released by the recipient  
38 unless the conditions of this act are met.

39

40 15. A patient or patient representative has the right to:

41 a. have access to health care information concerning the patient;

42 b. receive a copy of health care information from the patient's  
43 record upon payment of a reasonable charge to a health care provider  
44 as determined by the director;

45 c. have a notation made in the patient's record, upon the request of  
46 the patient or patient representative, which reflects: any amendment

1 to, or correction of, the information in the record, or any such change  
2 proposed by the patient or patient representative with which the health  
3 care provider disagrees in regard to the accuracy of the record; and

4 d. revoke at any time the patient's or patient representative's  
5 authorization for disclosure of health care information contained in the  
6 record, unless the disclosure is required to effectuate payment for  
7 health care that has been provided to the patient, or other substantial  
8 action has been taken in reliance on that authorization.

9 A patient may not maintain an action against a health care provider  
10 or a person employed by a health care provider for disclosure of health  
11 care information made in good faith reliance on the patient's or patient  
12 representative's written authorization, if the provider or employee had  
13 no notice of the revocation at the time the disclosure was made.

14  
15 16. a. A record may be disclosed by an order of a court of  
16 competent jurisdiction which is granted pursuant to an application  
17 showing good cause therefor. At a good cause hearing, the court shall  
18 weigh the public interest and need for disclosure against the injury to:  
19 the patient, the health care provider-patient relationship, the services  
20 offered by the health care provider, and those provisions of State or  
21 federal law which are intended to assure the confidentiality of patient  
22 health care information. Upon the granting of the order, the court, in  
23 determining the extent to which a disclosure of all or any part of a  
24 record is necessary, shall impose appropriate safeguards to prevent an  
25 unauthorized disclosure.

26 b. A court may authorize disclosure of a patient's record for the  
27 purpose of conducting an investigation of, or a prosecution for, a  
28 crime of which the patient or other person identified in the record is  
29 suspected only if the crime is a first degree crime and there is a  
30 reasonable likelihood that the record in question will disclose material  
31 information or evidence of substantial value in connection with the  
32 investigation or prosecution; except that nothing in this subsection  
33 shall be construed to limit the provisions of the "New Jersey Insurance  
34 Fraud Prevention Act," P.L.1983, c.320 (C.17:33A-1 et seq.), or to  
35 limit the authority of the Division of Youth and Family Services in the  
36 Department of Human Services with respect to the provisions of  
37 chapter 6 of Title 9 of the Revised Statutes.

38 c. Except as provided in subsections a. and b. of this section, a  
39 record shall not be used to initiate or substantiate any criminal or civil  
40 charges against the patient or other person identified in the record or  
41 to conduct an investigation of that person.

42 d. The court shall deny an application for disclosure of a record  
43 unless the court makes a specific finding that the health care provider  
44 and the patient or patient representative were afforded the opportunity  
45 to be represented at the hearing.

46 e. Nothing in this section shall be construed to authorize disclosure

1 of any confidential communication which is otherwise protected by  
2 statute, court rule or common law.

3

4 17. a. When authorization is required for disclosure of the record  
5 of a deceased or legally incompetent patient, the authorization shall be  
6 obtained:

7 (1) From an executor, administrator of the estate, or patient  
8 representative;

9 (2) From the patient's spouse or primary caretaking partner or, if  
10 none, by another member of the patient's family; or

11 (3) From the director in the event that a deceased patient has  
12 neither an authorized representative or next-of-kin.

13 b. When authorization is required for disclosure of the record of a  
14 minor, it shall be obtained from the parent, guardian, or other  
15 individual authorized under State law to act in the minor's behalf.

16

17 18. a. If a health care provider or a person employed by a health  
18 care provider, or a person who is granted access to a record  
19 maintained by the provider, fails to comply with the provisions of this  
20 act, a patient or other person whose rights are violated may apply to  
21 the Superior Court of this State, or any other court of competent  
22 jurisdiction, for appropriate equitable relief.

23 b. A health care provider or a person employed by a health care  
24 provider, or a person who is granted access to a record maintained by  
25 the provider, who discloses health care information in violation of the  
26 provisions of this act shall be liable for damages sustained by the  
27 person about whom the information relates.

28 c. Each disclosure of a record made in violation of the provisions  
29 of this act is a separate and actionable offense.

30 d. In an action brought pursuant to this section, the court may  
31 award the costs of the action and reasonable attorney's fees to the  
32 prevailing party.

33 e. An action under this section shall be brought within two years  
34 from the date that the alleged violation is or should have been  
35 discovered.

36

37 19. a. A person who, under false or fraudulent pretenses, requests  
38 or obtains health care information from a health care provider or a  
39 person employed by a health care provider, or requests or obtains a  
40 patient's authorization for disclosure of that information, is guilty of  
41 a crime of the fourth degree.

42 b. A person who, under false or fraudulent pretenses, requests or  
43 obtains health care information from a health care provider or a person  
44 employed by a health care provider and intentionally uses, sells or  
45 transfers that information for remuneration, profit or monetary gain,  
46 is guilty of a crime of the second degree.

1 c. A person who unlawfully takes health care information from a  
2 health care provider or a person employed by a health care provider  
3 and intentionally uses, sells or transfers that information for  
4 remuneration, profit or monetary gain, is guilty of a crime of the  
5 second degree.

6  
7 20. Nothing in sections 12 through 19 of this act shall be construed  
8 to limit a person's immunity from liability for civil damages in  
9 accordance with the provisions of section 1 of P.L.1983, c.248  
10 (C.45:9-19.1).

11  
12 21. The director, pursuant to the "Administrative Procedure Act,"  
13 P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and regulations  
14 to effectuate the purposes of sections 12 through 20 of this act.

15  
16 22. This act shall take effect immediately.

17  
18  
19 STATEMENT

20  
21 This bill establishes uniform health care information record  
22 confidentiality, security and access requirements for all health care  
23 patients in New Jersey, whether they are receiving services in a  
24 licensed health care facility or from a health care provider regulated  
25 under Title 45 of the Revised Statutes. The bill also establishes civil  
26 and criminal penalties for violations of these requirements.

27 The bill requires that health care facilities and providers implement  
28 a written confidentiality policy which includes procedures to ensure  
29 the security of their health care information records during storage,  
30 processing or transmission, either in electronic or other form.

31 The bill also provides that if a patient's or patient representative's  
32 prior written authorization for disclosure of health care information is  
33 not obtained, information contained in the record shall be disclosed  
34 only under the following conditions:

35 c To the patient or the patient representative;

36 c To a health care provider who is providing health care to the  
37 patient, except as limited or prohibited by the patient;

38 c To a member of the patient's immediate family, or to another  
39 person with whom the patient is known to have a close  
40 personal relationship, in accordance with good medical or  
41 other professional practice, except as limited or prohibited by  
42 the patient;

43 c To any person in order to avoid or minimize imminent danger  
44 to the health or safety of the patient or any other person, or to  
45 alleviate emergency circumstances affecting the health or safety  
46 of any person;

- 1     C    To federal, State or local government authorities, as required  
2         by law;
- 3     C    To qualified personnel for the purpose of conducting scientific  
4         research;
- 5     C    To qualified personnel for the purpose of conducting  
6         management audits, financial audits or program evaluation;
- 7     C    To qualified personnel involved in medical education or in the  
8         patient's diagnosis and treatment;
- 9     C    To the Department of Health, the Attorney General, the  
10        Division of Consumer Affairs in the Department of Law and  
11        Public Safety, or a professional or occupational board located  
12        within that division, as required by State or federal law;
- 13    C    As permitted by Department of Health rules and regulations for  
14        disease prevention and control; or
- 15    C    In all other instances authorized by State or federal law.

16     The bill provides, however, that no provision therein shall be  
17     construed to permit the disclosure of a record to a person, agency or  
18     other entity to whom disclosure is otherwise prohibited under State or  
19     federal law.

20     The bill also stipulates that a patient or patient representative has  
21     the right to:

- 22
- 23     C    have access to health care information concerning the patient;
- 24     C    receive a copy of health care information from the patient's  
25         record upon payment of a reasonable charge;
- 26     C    have a notation made in the patient's record which reflects any  
27         amendment to, or correction of, the information in the record;  
28         and
- 29     C    revoke at any time the patient's or patient representative's  
30         authorization for disclosure of health care information in the  
31         record, unless the disclosure is required to effectuate payment  
32         for health care that has been provided, or other substantial  
33         action has been taken in reliance on that authorization.

34     The bill permits a patient's health care information record to be  
35     disclosed by a court order based upon good cause, after weighing the  
36     public interest and need for disclosure against the injury to: the  
37     patient, the health care provider-patient relationship, the services  
38     offered by the health care facility or provider, and State or federal law  
39     governing patient health care information confidentiality.

40     In addition, the bill requires that health care information disclosed  
41     pursuant to its provisions be held confidential by the recipient of the  
42     record and not be released by the recipient unless the conditions of this  
43     bill are met.

44     The bill also specifies those persons who may provide authorization  
45     for the disclosure of the record of a patient who is deceased or legally  
46     incompetent, or a minor.

1 With regard to penalties for noncompliance, the bill provides as  
2 follows:

3 C If a health care facility or provider, or an employee thereof, or  
4 a recipient of a patient's record, fails to comply with the  
5 provisions of the bill, a patient or other person whose rights  
6 are violated may apply to a court of competent jurisdiction for  
7 appropriate equitable relief, which may include actual damages  
8 and reasonable attorney's fees and court costs.

9 C A person who, under false or fraudulent pretenses, requests or  
10 obtains health care information from a health care facility or  
11 provider, or an employee thereof, or requests or obtains a  
12 patient's authorization for disclosure of that information, is  
13 guilty of a fourth degree crime (punishable by a fine of up to  
14 \$7,500, or imprisonment for up to 18 months, or both).

15 C A person who, under false or fraudulent pretenses, requests or  
16 obtains health care information from a health care facility or  
17 provider, or an employee thereof, and intentionally uses, sells  
18 or transfers that information for remuneration, profit or  
19 monetary gain, is guilty of a second degree crime (punishable  
20 by a fine of up to \$100,000, or imprisonment for five to 10  
21 years, or both).

22 C A person who unlawfully takes health care information from  
23 a health care facility or provider, or an employee thereof, and  
24 intentionally uses, sells or transfers that information for  
25 remuneration, profit or monetary gain, is guilty of a second  
26 degree crime (punishable by a fine of up to \$100,000, or  
27 imprisonment for five to 10 years, or both).

28 The bill stipulates that no provision therein shall be construed to  
29 limit a person's immunity from civil liability in accordance with the  
30 provisions of section 1 of P.L.1983, c.248 (C.45:9-19.1). That statute  
31 protects "whistle blowers" who report physician misconduct to the  
32 State Board of Medical Examiners.

33 This bill is part of a legislative package designed to effectuate the  
34 recommendations of the Healthcare Information Networks and  
35 Technologies (HINT) report to the Legislature under the joint auspices  
36 of Thomas Edison State College and the New Jersey Institute of  
37 Technology.

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42 Establishes health care information record confidentiality and security  
43 requirements for health care facilities and providers.