

HOUSE BILL No. 1924

DIGEST OF INTRODUCED BILL

Citations Affected: IC 16-39-1-10; IC 22-3-5.5.

Synopsis: Medical records privacy. Provides that an employee has the right to examine and receive a copy of the employee's medical records. Provides a mechanism by which an employee may request and provide corrections to the employee's medical records. Requires that an entity possessing an employee's medical records not collect, use, or disclose the employee's personal health information except under certain circumstances. Provides circumstances under which an entity possessing an employee's medical records may disclose the information contained in the medical records without the employee's consent. Requires the entity to keep a record of each disclosure for five years. Provides circumstances under which an entity possessing an
(Continued next page)

Effective: July 1, 1999.

Cheney, Liggett

January 26, 1999, read first time and referred to Committee on Human Affairs.

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Digest Continued

employee's medical records may disclose information contained in the medical records to a research organization without the employee's consent. Provides specific civil penalties and criminal penalties that apply to an entity possessing an employee's medical records or to a research organization that knowingly or intentionally obtains an employee's personal health information or discloses an employee's personal health information to another person for reasons other than those provided by law.

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Introduced

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

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HOUSE BILL No. 1924



A BILL FOR AN ACT to amend the Indiana Code concerning labor and industrial safety.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 16-39-1-10 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]: **Sec. 10. In addition to the provisions of this article**
4 **relating to the privacy of medical records in general, the provisions**
5 **of IC 22-3-5.5 apply to the privacy of an employee's medical**
6 **records in worker's compensation cases.**

7 SECTION 2. IC 22-3-5.5 IS ADDED TO THE INDIANA CODE
8 AS A **NEW CHAPTER** TO READ AS FOLLOWS [EFFECTIVE
9 JULY 1, 1999]:

10 **Chapter 5.5. Worker's Compensation: Medical Records Privacy**
11 **Sec. 1. The provisions of this chapter apply in addition to the**
12 **provisions relating to the privacy of medical records under**
13 **IC 16-39.**

14 **Sec. 2. (a) The definitions in this section apply throughout this**
15 **chapter.**



1 (b) "Employee" means the:

- 2 (1) individual covered by this article; or
 3 (2) individual's attorney or authorized union representative
 4 if the attorney or union representative has been given written
 5 authorization by the employee to act on the employee's behalf.

6 (c) "Personal health information" or "medical records" means
 7 information about an employee that relates to the following:

- 8 (1) The employee's health or health care history, including
 9 genetic information about the employee.
 10 (2) Provision of health care to the employee.
 11 (3) Payment for health care provided to the employee.

12 The term includes any identifying information that is collected in
 13 the course of the providing or paying for health care for the
 14 employee.

15 (d) "Trustee" means:

- 16 (1) a health care professional;
 17 (2) a health care facility;
 18 (3) a worker's compensation agency;
 19 (4) an employer (as defined in IC 22-3-6-1(a)); or
 20 (5) a health services agency;

21 that collects or maintains personal health information.

22 Sec. 3. Whenever an employee is represented by an attorney or
 23 authorized union representative, a notice or copy required to be
 24 provided to the employee under this chapter must also be provided
 25 to the employee's attorney or authorized union representative.

26 Sec. 4. An employee has a right, on request, to examine and
 27 receive a copy of the employee's personal health information that
 28 is maintained by a trustee.

29 Sec. 5. For purposes of accuracy or completeness, an employee
 30 may request, in writing, a correction of any personal health
 31 information that the employee believes is inaccurate.

32 Sec. 6. (a) A trustee who fails to make a requested correction
 33 under section 5 of this chapter to an employee's personal health
 34 information within thirty (30) days after receiving the request
 35 must:

- 36 (1) notify the employee in writing; and
 37 (2) state one (1) or more reasons for the refusal.

38 (b) An employee who receives a notification under subsection (a)
 39 may file a statement of disagreement that includes the following:

- 40 (1) A description of the correction requested.
 41 (2) The reason for the correction.



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1 (c) Upon receiving a statement described in subsection (b), the
2 trustee must add the statement to the employee's medical record.

3 **Sec. 7. (a) A trustee shall:**

4 (1) not collect, use, or disclose personal health information
5 about an employee unless the information is for a lawful
6 purpose connected with a function or activity of the trustee;
7 and

8 (2) collect, use, or disclose only as much personal health
9 information about an employee as is reasonably necessary to
10 accomplish the purpose for which the personal health
11 information is collected, used, or disclosed.

12 (b) Reasons for collecting, using, or disclosing an employee's
13 personal health information include determinations of the
14 following:

15 (1) A diagnosis of the employee's condition.

16 (2) Reasonable and necessary treatment for the employee's
17 condition.

18 (3) The amount of time that the employee will be out of work.

19 (4) The relationship, if any, of the employee's condition to the
20 employee's employment.

21 (5) Any work related restrictions resulting from the
22 employee's condition.

23 (6) The kind of work for which the employee may be eligible.

24 (7) The anticipated time that the employee will be restricted.

25 (8) The permanent impairment, if any, resulting from the
26 employee's condition.

27 (c) Other personal health information may be collected, used, or
28 disclosed by the trustee only if authorized by the employee or by
29 the employee's legal representative in writing, provided that the
30 purpose for which the additional information is being sought has
31 been revealed to the employee or the employee's legal
32 representative.

33 **Sec. 8. (a) A trustee may disclose personal health information
34 without the consent of an employee only under the following
35 conditions:**

36 (1) The trustee reasonably believes that the disclosure is
37 necessary to prevent or reduce a serious and immediate threat
38 to:

39 (A) the employee; or

40 (B) public health or public safety.

41 (2) To provide a billing review organization with information
42 needed to undertake periodic reviews of claims processing

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1 and payments.

2 (3) To assist in identifying a deceased employee.

3 (4) To inform the representative or a relative of a deceased
4 employee, or any other individual the trustee considers
5 reasonable to inform under the circumstances, of the
6 employee's death.

7 (5) To conduct a peer review by health professionals.

8 (6) The disclosure is required by law for law enforcement
9 purposes.

10 (b) A trustee may disclose information under subsection (a) only
11 to the extent the recipient needs to know the information.

12 (c) A trustee shall keep a record of all disclosures made under
13 this section for five (5) years.

14 **Sec. 9. (a)** A trustee may disclose an employee's personal health
15 information without the employee's consent to research
16 organizations conducting scientific, medical or public policy
17 research.

18 (b) A trustee shall keep, for five (5) years after disclosing an
19 employee's personal health information under subsection (a), a
20 record of the research organizations to which the trustee discloses
21 protected personal health information.

22 (c) A trustee shall not disclose protected personal health
23 information to a research organization unless the research
24 organization agrees not to disclose the protected personal health
25 information to a third person.

26 (d) A trustee shall disclose only the minimum data necessary to
27 conduct the intended research.

28 (e) The trustee shall disclose protected personal health
29 information only when the information is necessary to conduct the
30 research.

31 **Sec. 10.** A research organization shall execute an agreement
32 with the trustee that contains the following:

33 (1) A provision that it is unreasonable or impractical for the:

34 (A) person proposing the research; or

35 (B) trustee;

36 to obtain consent from an employee regarding the employee's
37 personal health information.

38 (2) A requirement that the research project contain the
39 following:

40 (A) Reasonable safeguards to protect the confidentiality
41 and security of personal health information.

42 (B) Procedures to destroy the information or remove all

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- 1 identifying information at the earliest opportunity
 2 consistent with the purposes of the project.
- 3 (3) A provision that the personal health information requested
 4 will not be published in a form that could reasonably identify
 5 the employees concerned.
- 6 (4) A provision that the personal health information requested
 7 will be used only for the purposes of an approved research
 8 project.
- 9 (5) A provision that all individual identifiers will be removed
 10 before the publication or release of the research project.
- 11 **Sec. 11. (a) The penalties described in subsection (b) apply to a**
 12 **trustee or research organization that knowingly or intentionally:**
- 13 (1) obtains personal health information relating to an
 14 employee; or
- 15 (2) discloses personal health information to another person;
 16 in violation of this chapter.
- 17 (b) Except as provided in subsections (c) and (d), a person
 18 described in subsection (a):
- 19 (1) commits a Class A misdemeanor; and
 20 (2) in addition to any fine imposed under subdivision (1), may
 21 be assessed a civil penalty by the worker's compensation
 22 board of not more than fifty thousand dollars (\$50,000).
- 23 (c) If a violation of this chapter is knowingly or intentionally
 24 committed under false pretenses, the person committing the
 25 violation:
- 26 (1) commits a Class C felony; and
 27 (2) in addition to any fine imposed under subdivision (1), may
 28 be assessed a civil penalty by the worker's compensation
 29 board of not more than two hundred fifty thousand dollars
 30 (\$250,000).
- 31 (d) If a violation of this chapter is knowingly or intentionally
 32 committed with the intent to sell, transfer, or use personal health
 33 information for commercial advantage, personal gain or malicious
 34 harm, the person committing the violation:
- 35 (1) commits a Class B felony; and
 36 (2) in addition to any fine imposed under subdivision (1), may
 37 be assessed a civil penalty by the worker's compensation
 38 board of not more than five hundred thousand dollars
 39 (\$500,000).
- 40 (e) In the case of a person described in subsection (a), the civil
 41 penalties described in subsections (b) through (d) shall be doubled
 42 for every subsequent violation of this chapter.



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