

SB1821



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB1821

Introduced 2/20/2009, by Sen. David Luechtefeld

SYNOPSIS AS INTRODUCED:

210 ILCS 85/6.17

Amends the Hospital Licensing Act. Makes a technical change in a Section concerning protection of and confidential access to medical records and information.

LRB096 11140 DRJ 21508 b

A BILL FOR

1 AN ACT concerning regulation.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Hospital Licensing Act is amended by
5 changing Section 6.17 as follows:

6 (210 ILCS 85/6.17)

7 Sec. 6.17. Protection of and confidential access to medical
8 records and information.

9 (a) Every hospital licensed under this ~~this~~ Act shall
10 develop a medical record for each of its patients as required
11 by the Department by rule.

12 (b) All information regarding a hospital patient gathered
13 by the hospital's medical staff and its agents and employees
14 shall be the property and responsibility of the hospital and
15 must be protected from inappropriate disclosure as provided in
16 this Section.

17 (c) Every hospital shall preserve its medical records in a
18 format and for a duration established by hospital policy and
19 for not less than 10 years, provided that if the hospital has
20 been notified in writing by an attorney before the expiration
21 of the 10 year retention period that there is litigation
22 pending in court involving the record of a particular patient
23 as possible evidence and that the patient is his client or is

1 the person who has instituted such litigation against his
2 client, then the hospital shall retain the record of that
3 patient until notified in writing by the plaintiff's attorney,
4 with the approval of the defendant's attorney of record, that
5 the case in court involving such record has been concluded or
6 for a period of 12 years from the date that the record was
7 produced, whichever occurs first in time.

8 (d) No member of a hospital's medical staff and no agent or
9 employee of a hospital shall disclose the nature or details of
10 services provided to patients, except that the information may
11 be disclosed to the patient, persons authorized by the patient,
12 the party making treatment decisions, if the patient is
13 incapable of making decisions regarding the health services
14 provided, those parties directly involved with providing
15 treatment to the patient or processing the payment for that
16 treatment, those parties responsible for peer review,
17 utilization review or quality assurance, risk management, or
18 defense of claims brought against the hospital arising out of
19 the care, and those parties required to be notified under the
20 Abused and Neglected Child Reporting Act, the Illinois Sexually
21 Transmissible Disease Control Act, or where otherwise
22 authorized or required by law.

23 (e) The hospital's medical staff members and the hospital's
24 agents and employees may communicate, at any time and in any
25 fashion, with legal counsel for the hospital concerning the
26 patient medical record privacy and retention requirements of

1 this Section and any care or treatment they provided or
2 assisted in providing to any patient within the scope of their
3 employment or affiliation with the hospital.

4 (e-5) Notwithstanding subsections (d) and (e), for actions
5 filed on or after January 1, 2004, after a complaint for
6 healing art malpractice is served upon the hospital or upon its
7 agents or employees, members of the hospital's medical staff
8 who are not actual or alleged agents, employees, or apparent
9 agents of the hospital may not communicate with legal counsel
10 for the hospital or with risk management of the hospital
11 concerning the claim alleged in the complaint for healing art
12 malpractice against the hospital except with the patient's
13 consent or in discovery authorized by the Code of Civil
14 Procedure or the Supreme Court rules. For the purposes of this
15 subsection (e-5), "hospital" includes a hospital affiliate as
16 defined in subsection (b) of Section 10.8 of this Act.

17 (f) Each hospital licensed under this Act shall provide its
18 federally designated organ procurement agency and any tissue
19 bank with which it has an agreement with access to the medical
20 records of deceased patients for the following purposes:

21 (1) estimating the hospital's organ and tissue
22 donation potential;

23 (2) identifying the educational needs of the hospital
24 with respect to organ and tissue donation; and

25 (3) identifying the number of organ and tissue
26 donations and referrals to potential organ and tissue

1 donors.

2 (g) All hospital and patient information, interviews,
3 reports, statements, memoranda, and other data obtained or
4 created by a tissue bank or federally designated organ
5 procurement agency from the medical records review described in
6 subsection (f) shall be privileged, strictly confidential, and
7 used only for the purposes put forth in subsection (f) of this
8 Section and shall not be admissible as evidence nor
9 discoverable in an action of any kind in court or before a
10 tribunal, board, agency, or person.

11 (h) Any person who, in good faith, acts in accordance with
12 the terms of this Section shall not be subject to any type of
13 civil or criminal liability or discipline for unprofessional
14 conduct for those actions under any professional licensing
15 statute.

16 (i) Any individual who wilfully or wantonly discloses
17 hospital or medical record information in violation of this
18 Section is guilty of a Class A misdemeanor. As used in this
19 subsection, "wilfully or wantonly" means a course of action
20 that shows an actual or deliberate intention to cause harm or
21 that, if not intentional, shows an utter indifference to or
22 conscious disregard for the safety of others or their property.

23 (j) The changes to this Section made by this amendatory Act
24 of the 93rd General Assembly apply to any action filed on or
25 after January 1, 2004.

26 (Source: P.A. 93-492, eff. 1-1-04.)