



# Adopted in House Comm. on Mar 03, 2004

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1 AMENDMENT TO HOUSE BILL 4059

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 4059, AS AMENDED, in  
3 Section 5, Sec. 367.4, by replacing all of subsections (b)  
4 through (f) with the following:

5 "Summary health information" means information that may be  
6 individually identifiable health information and (i) that  
7 summarizes the claims history, claims expenses, or type of  
8 claims experienced by individuals for whom a plan sponsor has  
9 provided health benefits under a group health plan and (ii)  
10 from which the information described in subdivision (d)(2)(i)  
11 has been deleted, except that the geographic information  
12 described in subdivision (d)(2)(i)(B) need only be aggregated  
13 to the level of a 5-digit zip code.

14 (b) Except as otherwise provided in this subsection, a  
15 group health plan, in order to disclose protected health  
16 information to the plan sponsor or to provide for or permit the  
17 disclosure of protected health information to the plan sponsor  
18 by a health insurance issuer or health maintenance organization  
19 with respect to the group health plan, must ensure that the  
20 plan documents restrict uses and disclosures of such  
21 information by the plan sponsor consistent with the  
22 requirements of this Section.

23 The group health plan, or a health insurance issuer or  
24 health maintenance organization with respect to the group  
25 health plan, shall disclose summary health information to the  
26 plan sponsor if the plan sponsor requests the summary health

1 information for the purpose of (i) obtaining premium bids from  
2 health plans for providing health insurance coverage under the  
3 group health plan or (ii) modifying, amending, or terminating  
4 the group health plan.

5 The plan documents of the group health plan must be amended  
6 to incorporate provisions to do the following:

7 (1) Establish the permitted and required uses and  
8 disclosures of such information by the plan sponsor,  
9 provided that such permitted and required uses and  
10 disclosures may not be inconsistent with this Section.

11 (2) Provide that the group health plan will disclose  
12 protected health information to the plan sponsor only upon  
13 receipt of a certification by the plan sponsor that the  
14 plan documents have been amended to incorporate the  
15 following provisions and that the plan sponsor agrees to:

16 (A) Not use or further disclose the information  
17 other than as permitted or required by the plan  
18 documents or as required by law.

19 (B) Ensure that any agents, including a  
20 subcontractor, to whom it provides protected health  
21 information received from the group health plan agree  
22 to the same restrictions and conditions that apply to  
23 the plan sponsor with respect to such information.

24 (C) Not use or disclose the information for  
25 employment-related actions and decisions or in  
26 connection with any other benefit or employee benefit  
27 plan of the plan sponsor.

28 (D) Report to the group health plan any use or  
29 disclosure of the information that is inconsistent  
30 with the uses or disclosures provided for of which it  
31 becomes aware.

32 (E) Make available protected health information.

33 (F) Make available protected health information  
34 for amendment, and incorporate any amendments to

1 protected health information.

2 (G) Make available the information required to  
3 provide an accounting of disclosures.

4 (H) Make its internal practices, books, and  
5 records relating to the use and disclosure of protected  
6 health information received from the group health plan  
7 available to the Director for purposes of determining  
8 compliance by the group health plan with this Section.

9 (I) If feasible, return or destroy all protected  
10 health information received from the group health plan  
11 that the sponsor still maintains in any form and retain  
12 no copies of such information when no longer needed for  
13 the purpose for which disclosure was made, except that,  
14 if such return or destruction is not feasible, limit  
15 further uses and disclosures to those purposes that  
16 make the return or destruction of the information  
17 infeasible.

18 (J) Ensure that the adequate separation required  
19 in paragraph (3) is established.

20 (3) Provide for adequate separation between the group  
21 health plan and the plan sponsor. The plan documents must  
22 do the following:

23 (A) Describe those employees or classes of  
24 employees or other persons under the control of the  
25 plan sponsor to be given access to the protected health  
26 information to be disclosed, provided that any  
27 employee or person who receives protected health  
28 information relating to payment under, health care  
29 operations of, or other matters pertaining to the group  
30 health plan in the ordinary course of business must be  
31 included in such description.

32 (B) Restrict the access to and use by such  
33 employees and other persons described in subparagraph  
34 (A) of this paragraph (3) to the plan administration

1 functions that the plan sponsor performs for the group  
2 health plan.

3 (C) Provide an effective mechanism for resolving  
4 any issues of noncompliance by persons described in  
5 subparagraph (A) of this paragraph (3) with the plan  
6 document provisions required by this subsection.

7 (c) Standard: de-identification of protected health  
8 information. Health information that does not identify an  
9 individual and with respect to which there is no reasonable  
10 basis to believe that the information can be used to identify  
11 an individual is not individually identifiable health  
12 information.

13 (d) Implementation specifications: requirements for de-  
14 identification of protected health information. A covered  
15 entity may determine that health information is not  
16 individually identifiable health information only if:

17 (1) A person with appropriate knowledge of and  
18 experience with generally accepted statistical and  
19 scientific principles and methods for rendering  
20 information not individually identifiable:

21 (A) Applying such principles and methods,  
22 determines that the risk is very small that the  
23 information could be used, alone or in combination with  
24 other reasonably available information, by an  
25 anticipated recipient to identify an individual who is  
26 a subject of the information; and

27 (B) Documents the methods and results of the  
28 analysis that justify such determination; or

29 (2) (i) The following identifiers of the individual or  
30 of relatives, employers, or household members of the  
31 individual, are removed:

32 (A) Names;

33 (B) All geographic subdivisions smaller than a  
34 State, including street address, city, county,

1       precinct, zip code, and their equivalent geocodes,  
2       except for the initial 3 digits of a zip code if,  
3       according to the current publicly available data from  
4       the Bureau of the Census:

5               (i) The geographic unit formed by combining  
6               all zip codes with the same 3 initial digits  
7               contains more than 20,000 people; and

8               (ii) The initial 3 digits of a zip code for all  
9               such geographic units containing 20,000 or fewer  
10              people is changed to 000;

11              (C) All elements of dates (except year) for dates  
12              directly related to an individual, including birth  
13              date, admission date, discharge date, date of death;  
14              and all ages over 89 and all elements of dates  
15              (including year) indicative of such age, except that  
16              such ages and elements may be aggregated into a single  
17              category of age 90 or older;

18              (D) Telephone numbers;

19              (E) Fax numbers;

20              (F) Electronic mail addresses;

21              (G) Social security numbers;

22              (H) Medical record numbers;

23              (I) Health plan beneficiary numbers;

24              (J) Account numbers;

25              (K) Certificate/license numbers;

26              (L) Vehicle identifiers and serial numbers,  
27              including license plate numbers;

28              (M) Device identifiers and serial numbers;

29              (N) Web Universal Resource Locators (URLs);

30              (O) Internet Protocol (IP) address numbers;

31              (P) Biometric identifiers, including finger and  
32              voice prints;

33              (Q) Full face photographic images and any  
34              comparable images; and

1           (R) Any other unique identifying number,  
2           characteristic, or code, except as permitted by  
3           subsection (i) of this Section; and

4           (ii) The covered entity does not have actual knowledge  
5           that the information could be used alone or in combination  
6           with other information to identify an individual who is a  
7           subject of the information.

8           (e) Implementation specifications: re-identification. A  
9           covered entity may assign a code or other means of record  
10           identification to allow information de-identified under this  
11           Section to be re-identified by the covered entity, provided  
12           that:

13           (1) Derivation. The code or other means of record  
14           identification is not derived from or related to  
15           information about the individual and is not otherwise  
16           capable of being translated so as to identify the  
17           individual; and

18           (2) Security. The covered entity does not use or  
19           disclose the code or other means of record identification  
20           for any other purpose, and does not disclose the mechanism  
21           for re-identification.

22           (f) (1) Standard: minimum necessary requirements. In order  
23           to comply with this Section, a covered entity must meet the  
24           requirements of subdivisions (f) (2) through (f) (5) of this  
25           Section with respect to a request for, or the use and  
26           disclosure of, protected health information.

27           (2) Implementation specifications: minimum necessary  
28           uses of protected health information.

29           (i) A covered entity must identify:

30           (A) Those persons or classes of persons, as  
31           appropriate, in its workforce who need access to  
32           protected health information to carry out their  
33           duties; and

34           (B) For each such person or class of persons, the

1 category or categories of protected health information  
2 to which access is needed and any conditions  
3 appropriate to such access.

4 (ii) A covered entity must make reasonable efforts to  
5 limit the access of such persons or classes identified in  
6 subdivision (f) (2) (i) (A) of this Section to protected  
7 health information consistent with subdivision  
8 (f) (2) (i) (B) of this Section.

9 (3) Implementation specification: Minimum necessary  
10 disclosures of protected health information.

11 (i) For any type of disclosure that it makes on a  
12 routine and recurring basis, a covered entity must  
13 implement policies and procedures (which may be  
14 standard protocols) that limit the protected health  
15 information disclosed to the amount reasonably  
16 necessary to achieve the purpose of the disclosure.

17 (ii) For all other disclosures, a covered entity  
18 must:

19 (A) Develop criteria designed to limit the  
20 protected health information disclosed to the  
21 information reasonably necessary to accomplish the  
22 purpose for which disclosure is sought; and

23 (B) Review requests for disclosure on an  
24 individual basis in accordance with such criteria.

25 (iii) A covered entity may rely, if such reliance  
26 is reasonable under the circumstances, on a requested  
27 disclosure as the minimum necessary for the stated  
28 purpose when:

29 (A) Making disclosures to public officials, if  
30 the public official represents that the  
31 information requested is the minimum necessary for  
32 the stated purpose or purposes;

33 (B) The information is requested by another  
34 covered entity;

1           (C) The information is requested by a  
2           professional who is a member of its workforce or is  
3           a business associate of the covered entity for the  
4           purpose of providing professional services to the  
5           covered entity, if the professional represents  
6           that the information requested is the minimum  
7           necessary for the stated purpose or purposes; or

8           (D) Documentation or representations that  
9           comply with the applicable requirements have been  
10          provided by a person requesting the information  
11          for research purposes.

12          (4) Implementation specifications: Minimum necessary  
13          requests for protected health information.

14           (i) A covered entity must limit any request for  
15           protected health information to that which is  
16           reasonably necessary to accomplish the purpose for  
17           which the request is made, when requesting such  
18           information from other covered entities.

19           (ii) For a request that is made on a routine and  
20           recurring basis, a covered entity must implement  
21           policies and procedures (which may be standard  
22           protocols) that limit the protected health information  
23           requested to the amount reasonably necessary to  
24           accomplish the purpose for which the request is made.

25           (iii) For all other requests, a covered entity  
26           must:

27           (A) Develop criteria designed to limit the  
28           request for protected health information to the  
29           information reasonably necessary to accomplish the  
30           purpose for which the request is made; and

31           (B) Review requests for disclosure on an  
32           individual basis in accordance with such criteria.

33          (5) Implementation specification: Other content  
34          requirement. For all uses, disclosures, or requests to

1 which the requirements in this subsection (f) apply, a  
2 covered entity may not use, disclose, or request an entire  
3 medical record, except when the entire medical record is  
4 specifically justified as the amount that is reasonably  
5 necessary to accomplish the purpose of the use, disclosure,  
6 or request.

7 (g) (1) Standard: Limited data set. A covered entity may use  
8 or disclose a limited data set that meets the requirements of  
9 subdivisions (g) (2) and (g) (3) of this Section if the covered  
10 entity enters into a data use agreement with the limited data  
11 set recipient in accordance with subdivision (g) (4) of this  
12 Section.

13 (2) Implementation specification: Limited data set. A  
14 limited data set is protected health information that  
15 excludes the following direct identifiers of the  
16 individual or of relatives, employers, or household  
17 members of the individual:

18 (i) Names;

19 (ii) Postal address information, other than town  
20 or city, State, and zip code;

21 (iii) Telephone numbers;

22 (iv) Fax numbers;

23 (v) Electronic mail addresses;

24 (vi) Social security numbers;

25 (vii) Medical record numbers;

26 (viii) Health plan beneficiary numbers;

27 (ix) Account numbers;

28 (x) Certificate/license numbers;

29 (xi) Vehicle identifiers and serial numbers,  
30 including license plate numbers;

31 (xii) Device identifiers and serial numbers;

32 (xiii) Web Universal Resource Locators (URLs);

33 (xiv) Internet Protocol (IP) address numbers;

34 (xv) Biometric identifiers, including finger and

1           voice prints; and

2           (xvi) Full face photographic images and any  
3           comparable images.

4           (3) Implementation specification: Permitted purposes  
5           for uses and disclosures.

6           (i) A covered entity may use or disclose a limited  
7           data set under subdivision (g) (1) of this Section only  
8           for the purposes of research, public health, or health  
9           care operations.

10           (ii) A covered entity may use protected health  
11           information to create a limited data set that meets the  
12           requirements of subdivision (g) (2) of this Section, or  
13           disclose protected health information only to a  
14           business associate for such purpose, whether or not the  
15           limited data set is to be used by the covered entity.

16           (4) Implementation specifications: Data use agreement.

17           (i) Agreement required. A covered entity may use or  
18           disclose a limited data set under subdivision (g) (1) of  
19           this Section only if the covered entity obtains  
20           satisfactory assurance, in the form of a data use  
21           agreement that meets the requirements of this Section,  
22           that the limited data set recipient will only use or  
23           disclose the protected health information for limited  
24           purposes.

25           (ii) Contents. A data use agreement between the  
26           covered entity and the limited data set recipient must:

27           (A) Establish the permitted uses and  
28           disclosures of such information by the limited  
29           data set recipient, consistent with subdivision  
30           (g) (3) of this Section. The data use agreement may  
31           not authorize the limited data set recipient to use  
32           or further disclose the information in a manner  
33           that would violate the requirements of this  
34           subpart, if done by the covered entity;

1           (B) Establish who is permitted to use or  
2           receive the limited data set; and

3           (C) Provide that the limited data set  
4           recipient will:

5                   (1) Not use or further disclose the  
6                   information other than as permitted by the data  
7                   use agreement or as otherwise required by law;

8                   (2) Use appropriate safeguards to prevent  
9                   use or disclosure of the information other than  
10                   as provided for by the data use agreement;

11                   (3) Report to the covered entity any use or  
12                   disclosure of the information not provided for  
13                   by its data use agreement of which it becomes  
14                   aware;

15                   (4) Ensure that any agents, including a  
16                   subcontractor, to whom it provides the limited  
17                   data set agrees to the same restrictions and  
18                   conditions that apply to the limited data set  
19                   recipient with respect to such information;  
20                   and

21                   (5) Not identify the information or  
22                   contact the individuals.

23           (iii) Compliance.

24           (A) A covered entity is not in compliance with  
25           the standards in this subsection (g) if the covered  
26           entity knew of a pattern of activity or practice of  
27           the limited data set recipient that constituted a  
28           material breach or violation of the data use  
29           agreement, unless the covered entity took  
30           reasonable steps to cure the breach or end the  
31           violation, as applicable, and, if such steps were  
32           unsuccessful:

33                   (1) Discontinued disclosure of protected  
34                   health information to the recipient; and

1                   (2) Reported the problem to the Secretary.

2                   (B) A covered entity that is a limited data set  
3                   recipient and violates a data use agreement will be  
4                   in noncompliance with the standards,  
5                   implementation specifications, and requirements of  
6                   this subsection (g).

7                   (h) (1) Standard: Uses and disclosures for fundraising. A  
8                   covered entity may use, or disclose to a business associate or  
9                   to an institutionally related foundation, the following  
10                   protected health information for the purpose of raising funds  
11                   for its own benefit, without an authorization meeting  
12                   requirements adopted by the Department:

13                   (i) Demographic information relating to an  
14                   individual; and

15                   (ii) Dates of health care provided to an  
16                   individual.

17                   (2) Implementation specifications: Fundraising  
18                   requirements.

19                   (i) The covered entity may not use or disclose  
20                   protected health information for fundraising purposes  
21                   as otherwise permitted by subdivision (h) (1) of this  
22                   Section.

23                   (ii) The covered entity must include in any  
24                   fundraising materials it sends to an individual under  
25                   this paragraph a description of how the individual may  
26                   opt out of receiving any further fundraising  
27                   communications.

28                   (iii) The covered entity must make reasonable  
29                   efforts to ensure that individuals who decide to opt  
30                   out of receiving future fundraising communications are  
31                   not sent such communications.

32                   (i) Standard: Uses and disclosures for underwriting and  
33                   related purposes. If a health plan receives protected heath  
34                   information for the purpose of underwriting, premium rating, or

1 other activities relating to the creation, renewal, or  
2 replacement of a contract of health insurance or health  
3 benefits, and if such health insurance or health benefits are  
4 not placed with the health plan, such health plan may not use  
5 or disclose such protected health information for any other  
6 purpose, except as may be required by law.

7 (j)(1) Standard: Verification requirements. Prior to any  
8 disclosure permitted by this Section, a covered entity must:

9 (i) Verify the identity of a person requesting  
10 protected health information and the authority of any  
11 such person to have access to protected health  
12 information under this Section, if the identity or any  
13 such authority of such person is not known to the  
14 covered entity; and

15 (ii) Obtain any documentation, statements, or  
16 representations, whether oral or written, from the  
17 person requesting the protected health information  
18 when such documentation, statement, or representation  
19 is a condition of the disclosure under this Section.

20 (2) Implementation specifications: Verification.

21 (i) Conditions on disclosures. If a disclosure is  
22 conditioned by this subpart on particular  
23 documentation, statements, or representations from the  
24 person requesting the protected health information, a  
25 covered entity may rely, if such reliance is reasonable  
26 under the circumstances, on documentation, statements,  
27 or representations that, on their face, meet the  
28 applicable requirements.

29 (ii) Identity of public officials. A covered  
30 entity may rely, if such reliance is reasonable under  
31 the circumstances, on any of the following to verify  
32 identity when the disclosure of protected health  
33 information is to a public official or a person acting  
34 on behalf of the public official:

1           (A) If the request is made in person,  
2           presentation of an agency identification badge,  
3           other official credentials, or other proof of  
4           government status;

5           (B) If the request is in writing, the request  
6           is on the appropriate government letterhead; or

7           (C) If the disclosure is to a person acting on  
8           behalf of a public official, a written statement on  
9           appropriate government letterhead that the person  
10           is acting under the government's authority or  
11           other evidence or documentation of agency, such as  
12           a contract for services, memorandum of  
13           understanding, or purchase order, that establishes  
14           that the person is acting on behalf of the public  
15           official.

16           (iii) Authority of public officials. A covered  
17           entity may rely, if such reliance is reasonable under  
18           the circumstances, on any of the following to verify  
19           authority when the disclosure of protected health  
20           information is to a public official or a person acting  
21           on behalf of the public official:

22           (A) A written statement of the legal authority  
23           under which the information is requested, or, if a  
24           written statement would be impracticable, an oral  
25           statement of such legal authority;

26           (B) If a request is made pursuant to legal  
27           process, warrant, subpoena, order, or other legal  
28           process issued by a grand jury or a judicial or  
29           administrative tribunal is presumed to constitute  
30           legal authority.

31           (iv) Exercise of professional judgment. The  
32           verification requirements of this subsection (n) are  
33           met if the covered entity relies on the exercise of  
34           professional judgment in making a use or disclosure or

1           acts on a good faith belief in making a disclosure.".