



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1694

Introduced 2/9/2011, by Sen. A. J. Wilhelmi

SYNOPSIS AS INTRODUCED:

735 ILCS 5/8-802	from Ch. 110, par. 8-802
735 ILCS 5/8-2001	from Ch. 110, par. 8-2001
735 ILCS 5/8-2001.5 new	
755 ILCS 45/4-3	from Ch. 110 1/2, par. 804-3

Amends the Code of Civil Procedure. Provides that, if there is no legally authorized personal representative for a deceased patient, the deceased had not appointed an agent under a power of attorney for health care who was authorized to act for the deceased after death, and the deceased had not specifically objected to disclosure in writing, a spouse, adult child, parent, or sibling of the deceased may request copies of the deceased patient's records and health care facilities and practitioners are authorized to provide a copy of those records upon payment of the statutory fee and a signed Authorized Relative Certification attesting to the fact that the person is authorized to receive the records. Sets forth the contents of the Authorized Relative Certification, provides for immunity, and amends other statutes to conform to the new provisions. Amends the Illinois Power of Attorney Act. Adds the function of accessing medical records to the existing instances when a health care agency may extend beyond the principal's death which now are to allow for an anatomical gift, an autopsy, or the disposition of remains.

LRB097 02679 AJO 49071 b

1 AN ACT concerning civil law.

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

4 Section 5. The Code of Civil Procedure is amended by
5 changing Sections 8-802 and 8-2001 and by adding Section
6 8-2001.5 as follows:

7 (735 ILCS 5/8-802) (from Ch. 110, par. 8-802)

8 Sec. 8-802. Physician and patient. No physician or surgeon
9 shall be permitted to disclose any information he or she may
10 have acquired in attending any patient in a professional
11 character, necessary to enable him or her professionally to
12 serve the patient, except only (1) in trials for homicide when
13 the disclosure relates directly to the fact or immediate
14 circumstances of the homicide, (2) in actions, civil or
15 criminal, against the physician for malpractice, (3) with the
16 expressed consent of the patient, or in case of his or her
17 death or disability, of his or her personal representative or
18 other person authorized to sue for personal injury or of the
19 beneficiary of an insurance policy on his or her life, health,
20 or physical condition, or as authorized by Section 8-2001.5,
21 (4) in all actions brought by or against the patient, his or
22 her personal representative, a beneficiary under a policy of
23 insurance, or the executor or administrator of his or her

1 estate wherein the patient's physical or mental condition is an
2 issue, (5) upon an issue as to the validity of a document as a
3 will of the patient, (6) in any criminal action where the
4 charge is either first degree murder by abortion, attempted
5 abortion or abortion, (7) in actions, civil or criminal,
6 arising from the filing of a report in compliance with the
7 Abused and Neglected Child Reporting Act, (8) to any
8 department, agency, institution or facility which has custody
9 of the patient pursuant to State statute or any court order of
10 commitment, (9) in prosecutions where written results of blood
11 alcohol tests are admissible pursuant to Section 11-501.4 of
12 the Illinois Vehicle Code, (10) in prosecutions where written
13 results of blood alcohol tests are admissible under Section
14 5-11a of the Boat Registration and Safety Act, (11) in criminal
15 actions arising from the filing of a report of suspected
16 terrorist offense in compliance with Section 29D-10(p)(7) of
17 the Criminal Code of 1961, or (12) upon the issuance of a
18 subpoena pursuant to Section 38 of the Medical Practice Act of
19 1987; the issuance of a subpoena pursuant to Section 25.1 of
20 the Illinois Dental Practice Act; or the issuance of a subpoena
21 pursuant to Section 22 of the Nursing Home Administrators
22 Licensing and Disciplinary Act.

23 In the event of a conflict between the application of this
24 Section and the Mental Health and Developmental Disabilities
25 Confidentiality Act to a specific situation, the provisions of
26 the Mental Health and Developmental Disabilities

1 Confidentiality Act shall control.

2 (Source: P.A. 95-478, eff. 8-27-07.)

3 (735 ILCS 5/8-2001) (from Ch. 110, par. 8-2001)

4 Sec. 8-2001. Examination of health care records.

5 (a) In this Section:

6 "Health care facility" or "facility" means a public or
7 private hospital, ambulatory surgical treatment center,
8 nursing home, independent practice association, or physician
9 hospital organization, or any other entity where health care
10 services are provided to any person. The term does not include
11 a health care practitioner.

12 "Health care practitioner" means any health care
13 practitioner, including a physician, dentist, podiatrist,
14 advanced practice nurse, physician assistant, clinical
15 psychologist, or clinical social worker. The term includes a
16 medical office, health care clinic, health department, group
17 practice, and any other organizational structure for a licensed
18 professional to provide health care services. The term does not
19 include a health care facility.

20 (b) Every private and public health care facility shall,
21 upon the request of any patient who has been treated in such
22 health care facility, or any person, entity, or organization
23 presenting a valid authorization for the release of records
24 signed by the patient or the patient's legally authorized
25 representative, or as authorized by Section 8-2001.5, permit

1 the patient, his or her health care practitioner, authorized
2 attorney, or any person, entity, or organization presenting a
3 valid authorization for the release of records signed by the
4 patient or the patient's legally authorized representative to
5 examine the health care facility patient care records,
6 including but not limited to the history, bedside notes,
7 charts, pictures and plates, kept in connection with the
8 treatment of such patient, and permit copies of such records to
9 be made by him or her or his or her health care practitioner or
10 authorized attorney.

11 (c) Every health care practitioner shall, upon the request
12 of any patient who has been treated by the health care
13 practitioner, or any person, entity, or organization
14 presenting a valid authorization for the release of records
15 signed by the patient or the patient's legally authorized
16 representative, permit the patient and the patient's health
17 care practitioner or authorized attorney, or any person,
18 entity, or organization presenting a valid authorization for
19 the release of records signed by the patient or the patient's
20 legally authorized representative, to examine and copy the
21 patient's records, including but not limited to those relating
22 to the diagnosis, treatment, prognosis, history, charts,
23 pictures and plates, kept in connection with the treatment of
24 such patient.

25 (d) A request for copies of the records shall be in writing
26 and shall be delivered to the administrator or manager of such

1 health care facility or to the health care practitioner. The
2 person (including patients, health care practitioners and
3 attorneys) requesting copies of records shall reimburse the
4 facility or the health care practitioner at the time of such
5 copying for all reasonable expenses, including the costs of
6 independent copy service companies, incurred in connection
7 with such copying not to exceed a \$20 handling charge for
8 processing the request and the actual postage or shipping
9 charge, if any, plus: (1) for paper copies 75 cents per page
10 for the first through 25th pages, 50 cents per page for the
11 26th through 50th pages, and 25 cents per page for all pages in
12 excess of 50 (except that the charge shall not exceed \$1.25 per
13 page for any copies made from microfiche or microfilm; records
14 retrieved from scanning, digital imaging, electronic
15 information or other digital format do not qualify as
16 microfiche or microfilm retrieval for purposes of calculating
17 charges); and (2) for electronic records, retrieved from a
18 scanning, digital imaging, electronic information or other
19 digital format in a electronic document, a charge of 50% of the
20 per page charge for paper copies under subdivision (d) (1). This
21 per page charge includes the cost of each CD Rom, DVD, or other
22 storage media. Records already maintained in an electronic or
23 digital format shall be provided in an electronic format when
24 so requested. If the records system does not allow for the
25 creation or transmission of an electronic or digital record,
26 then the facility or practitioner shall inform the requester in

1 writing of the reason the records can not be provided
2 electronically. The written explanation may be included with
3 the production of paper copies, if the requester chooses to
4 order paper copies. These rates shall be automatically adjusted
5 as set forth in Section 8-2006. The facility or health care
6 practitioner may, however, charge for the reasonable cost of
7 all duplication of record material or information that cannot
8 routinely be copied or duplicated on a standard commercial
9 photocopy machine such as x-ray films or pictures.

10 (e) The requirements of this Section shall be satisfied
11 within 30 days of the receipt of a written request by a patient
12 or by his or her legally authorized representative, health care
13 practitioner, authorized attorney, or any person, entity, or
14 organization presenting a valid authorization for the release
15 of records signed by the patient or the patient's legally
16 authorized representative. If the facility or health care
17 practitioner needs more time to comply with the request, then
18 within 30 days after receiving the request, the facility or
19 health care practitioner must provide the requesting party with
20 a written statement of the reasons for the delay and the date
21 by which the requested information will be provided. In any
22 event, the facility or health care practitioner must provide
23 the requested information no later than 60 days after receiving
24 the request.

25 (f) A health care facility or health care practitioner must
26 provide the public with at least 30 days prior notice of the

1 closure of the facility or the health care practitioner's
2 practice. The notice must include an explanation of how copies
3 of the facility's records may be accessed by patients. The
4 notice may be given by publication in a newspaper of general
5 circulation in the area in which the health care facility or
6 health care practitioner is located.

7 (g) Failure to comply with the time limit requirement of
8 this Section shall subject the denying party to expenses and
9 reasonable attorneys' fees incurred in connection with any
10 court ordered enforcement of the provisions of this Section.

11 (Source: P.A. 94-155, eff. 1-1-06; 95-478, eff. 1-1-08 (changed
12 from 8-27-07 by P.A. 95-480); 95-480, eff. 1-1-08.)

13 (735 ILCS 5/8-2001.5 new)

14 Sec. 8-2001.5. Authorization for release of a deceased
15 patient's records.

16 (a) A surviving spouse may make a written request for a
17 copy of his or her deceased spouse's records after the
18 deceased's date of death under these conditions:

19 (1) An executor or administrator had not been appointed
20 for the deceased's estate;

21 (2) The deceased had not appointed an agent under a
22 power of attorney for health care who was authorized to act
23 for the deceased after the deceased's date of death; and

24 (3) The deceased had not specifically objected to
25 disclosure in writing.

1 I, (insert name of authorized relative), certify that I am
2 an authorized relative of the deceased (insert name of
3 deceased). (A certified copy of the death certificate must be
4 attached.)

5 I certify that to the best of my knowledge and belief that
6 no executor or administrator has been appointed for the
7 deceased's estate or that no agent was authorized to act for
8 the deceased under a power of attorney for health care.

9 I certify that I am the surviving spouse of the deceased;
10 or

11 I certify that there is no surviving spouse and my
12 relationship to the deceased is (circle one):

13 (1) An adult son or daughter of the deceased.

14 (2) Either parent of the deceased.

15 (3) An adult brother or sister of the deceased.

16 This certification is made under penalty of perjury.*

17 Dated: (insert date)

18

19 (Print Authorized Relative's Name)

20

1 (Authorized Relative's Signature)

2

3 (Authorized Relative's Address)

4 *(Note: Perjury is defined in Section 32-2 of the Criminal Code
5 of 1961, and is a Class 3 felony.)

6 Section 10. The Illinois Power of Attorney Act is amended
7 by changing Section 4-3 as follows:

8 (755 ILCS 45/4-3) (from Ch. 110 1/2, par. 804-3)

9 Sec. 4-3. General principles. The health care powers that
10 may be delegated to an agent include, without limitation, all
11 powers an individual may have to be informed about and to
12 consent to or refuse or withdraw any type of health care for
13 the individual and all powers a parent may have to control or
14 consent to health care for a minor child. A health care agency
15 may extend beyond the principal's death if necessary to permit
16 anatomical gift, autopsy, ~~or~~ disposition of remains, or access
17 to medical records. Nothing in this Article shall impair or
18 supersede any legal right or legal responsibility which any
19 person may have to effect the withholding or withdrawal of
20 life-sustaining or death-delaying procedures in any lawful
21 manner, and the provisions of this Article are cumulative in
22 such respect.

23 (Source: P.A. 85-701.)