



Sen. A. J. Wilhelmi

Filed: 3/30/2011

09700SB1694sam002

LRB097 02679 AJ0 53334 a

1 AMENDMENT TO SENATE BILL 1694

2 AMENDMENT NO. _____. Amend Senate Bill 1694, AS AMENDED,
3 by replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Code of Civil Procedure is amended by
6 changing Sections 8-802 and 8-2001 and by adding Section
7 8-2001.5 as follows:

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

9 Sec. 8-802. Physician and patient. No physician or surgeon
10 shall be permitted to disclose any information he or she may
11 have acquired in attending any patient in a professional
12 character, necessary to enable him or her professionally to
13 serve the patient, except only (1) in trials for homicide when
14 the disclosure relates directly to the fact or immediate
15 circumstances of the homicide, (2) in actions, civil or

1 criminal, against the physician for malpractice, (3) with the
2 expressed consent of the patient, or in case of his or her
3 death or disability, of his or her personal representative or
4 other person authorized to sue for personal injury or of the
5 beneficiary of an insurance policy on his or her life, health,
6 or physical condition, or as authorized by Section 8-2001.5,
7 (4) in all actions brought by or against the patient, his or
8 her personal representative, a beneficiary under a policy of
9 insurance, or the executor or administrator of his or her
10 estate wherein the patient's physical or mental condition is an
11 issue, (5) upon an issue as to the validity of a document as a
12 will of the patient, (6) in any criminal action where the
13 charge is either first degree murder by abortion, attempted
14 abortion or abortion, (7) in actions, civil or criminal,
15 arising from the filing of a report in compliance with the
16 Abused and Neglected Child Reporting Act, (8) to any
17 department, agency, institution or facility which has custody
18 of the patient pursuant to State statute or any court order of
19 commitment, (9) in prosecutions where written results of blood
20 alcohol tests are admissible pursuant to Section 11-501.4 of
21 the Illinois Vehicle Code, (10) in prosecutions where written
22 results of blood alcohol tests are admissible under Section
23 5-11a of the Boat Registration and Safety Act, (11) in criminal
24 actions arising from the filing of a report of suspected
25 terrorist offense in compliance with Section 29D-10(p)(7) of
26 the Criminal Code of 1961, or (12) upon the issuance of a

1 subpoena pursuant to Section 38 of the Medical Practice Act of
2 1987; the issuance of a subpoena pursuant to Section 25.1 of
3 the Illinois Dental Practice Act; or the issuance of a subpoena
4 pursuant to Section 22 of the Nursing Home Administrators
5 Licensing and Disciplinary Act.

6 In the event of a conflict between the application of this
7 Section and the Mental Health and Developmental Disabilities
8 Confidentiality Act to a specific situation, the provisions of
9 the Mental Health and Developmental Disabilities
10 Confidentiality Act shall control.

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

12 (735 ILCS 5/8-2001) (from Ch. 110, par. 8-2001)

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

14 (a) In this Section:

15 "Health care facility" or "facility" means a public or
16 private hospital, ambulatory surgical treatment center,
17 nursing home, independent practice association, or physician
18 hospital organization, or any other entity where health care
19 services are provided to any person. The term does not include
20 a health care practitioner.

21 "Health care practitioner" means any health care
22 practitioner, including a physician, dentist, podiatrist,
23 advanced practice nurse, physician assistant, clinical
24 psychologist, or clinical social worker. The term includes a
25 medical office, health care clinic, health department, group

1 practice, and any other organizational structure for a licensed
2 professional to provide health care services. The term does not
3 include a health care facility.

4 (b) Every private and public health care facility shall,
5 upon the request of any patient who has been treated in such
6 health care facility, or any person, entity, or organization
7 presenting a valid authorization for the release of records
8 signed by the patient or the patient's legally authorized
9 representative, or as authorized by Section 8-2001.5, permit
10 the patient, his or her health care practitioner, authorized
11 attorney, or any person, entity, or organization presenting a
12 valid authorization for the release of records signed by the
13 patient or the patient's legally authorized representative to
14 examine the health care facility patient care records,
15 including but not limited to the history, bedside notes,
16 charts, pictures and plates, kept in connection with the
17 treatment of such patient, and permit copies of such records to
18 be made by him or her or his or her health care practitioner or
19 authorized attorney.

20 (c) Every health care practitioner shall, upon the request
21 of any patient who has been treated by the health care
22 practitioner, 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, permit the patient and the patient's health
26 care practitioner or authorized attorney, or any person,

1 entity, or organization presenting a valid authorization for
2 the release of records signed by the patient or the patient's
3 legally authorized representative, to examine and copy the
4 patient's records, including but not limited to those relating
5 to the diagnosis, treatment, prognosis, history, charts,
6 pictures and plates, kept in connection with the treatment of
7 such patient.

8 (d) A request for copies of the records shall be in writing
9 and shall be delivered to the administrator or manager of such
10 health care facility or to the health care practitioner. The
11 person (including patients, health care practitioners and
12 attorneys) requesting copies of records shall reimburse the
13 facility or the health care practitioner at the time of such
14 copying for all reasonable expenses, including the costs of
15 independent copy service companies, incurred in connection
16 with such copying not to exceed a \$20 handling charge for
17 processing the request and the actual postage or shipping
18 charge, if any, plus: (1) for paper copies 75 cents per page
19 for the first through 25th pages, 50 cents per page for the
20 26th through 50th pages, and 25 cents per page for all pages in
21 excess of 50 (except that the charge shall not exceed \$1.25 per
22 page for any copies made from microfiche or microfilm; records
23 retrieved from scanning, digital imaging, electronic
24 information or other digital format do not qualify as
25 microfiche or microfilm retrieval for purposes of calculating
26 charges); and (2) for electronic records, retrieved from a

1 scanning, digital imaging, electronic information or other
2 digital format in a electronic document, a charge of 50% of the
3 per page charge for paper copies under subdivision (d) (1). This
4 per page charge includes the cost of each CD Rom, DVD, or other
5 storage media. Records already maintained in an electronic or
6 digital format shall be provided in an electronic format when
7 so requested. If the records system does not allow for the
8 creation or transmission of an electronic or digital record,
9 then the facility or practitioner shall inform the requester in
10 writing of the reason the records can not be provided
11 electronically. The written explanation may be included with
12 the production of paper copies, if the requester chooses to
13 order paper copies. These rates shall be automatically adjusted
14 as set forth in Section 8-2006. The facility or health care
15 practitioner may, however, charge for the reasonable cost of
16 all duplication of record material or information that cannot
17 routinely be copied or duplicated on a standard commercial
18 photocopy machine such as x-ray films or pictures.

19 (e) The requirements of this Section shall be satisfied
20 within 30 days of the receipt of a written request by a patient
21 or by his or her legally authorized representative, health care
22 practitioner, authorized attorney, or any person, entity, or
23 organization presenting a valid authorization for the release
24 of records signed by the patient or the patient's legally
25 authorized representative. If the facility or health care
26 practitioner needs more time to comply with the request, then

1 within 30 days after receiving the request, the facility or
2 health care practitioner must provide the requesting party with
3 a written statement of the reasons for the delay and the date
4 by which the requested information will be provided. In any
5 event, the facility or health care practitioner must provide
6 the requested information no later than 60 days after receiving
7 the request.

8 (f) A health care facility or health care practitioner must
9 provide the public with at least 30 days prior notice of the
10 closure of the facility or the health care practitioner's
11 practice. The notice must include an explanation of how copies
12 of the facility's records may be accessed by patients. The
13 notice may be given by publication in a newspaper of general
14 circulation in the area in which the health care facility or
15 health care practitioner is located.

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

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

22 (735 ILCS 5/8-2001.5 new)

23 Sec. 8-2001.5. Authorization for release of a deceased
24 patient's records.

25 (a) In addition to disclosure allowed under Section 8-802,

1 a deceased person's health care records may be released upon
2 written request of the executor or administrator of the
3 deceased person's estate or to an agent appointed by the
4 deceased under a power of attorney for health care. When no
5 executor, administrator, or agent exists, and the person did
6 not specifically object to disclosure of his or her records in
7 writing, then a deceased person's health care records may be
8 released upon the written request of:

9 (1) the deceased person's surviving spouse; or

10 (2) if there is no surviving spouse, any one or more of
11 the following: (i) an adult son or daughter of the
12 deceased, (ii) a parent of the deceased, or (iii) an adult
13 brother or sister of the deceased.

14 (b) Health care facilities and practitioners are
15 authorized to provide a copy of a deceased patient's records
16 based upon a person's payment of the statutory fee and signed
17 "Authorized Relative Certification", attesting to the fact
18 that the person is authorized to receive such records under
19 this Section.

20 (c) Any person who, in good faith, relies on a copy of an
21 Authorized Relative Certification shall have the same
22 immunities from criminal and civil liability as those who rely
23 on a power of attorney for health care as provided by Illinois
24 law.

25 (d) Upon request for records of a deceased patient, the
26 named authorized relative shall provide the facility or

1 practitioner with a certified copy of the death certificate and
2 a certification in substantially the following form:

3 AUTHORIZED RELATIVE CERTIFICATION

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

8 I certify that to the best of my knowledge and belief that
9 no executor or administrator has been appointed for the
10 deceased's estate, that no agent was authorized to act for the
11 deceased under a power of attorney for health care, and the
12 deceased has not specifically objected to disclosure in
13 writing.

14 I certify that I am the surviving spouse of the deceased;
15 or

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

- 18 (1) An adult son or daughter of the deceased.
19 (2) Either parent of the deceased.
20 (3) An adult brother or sister of the deceased.

1 This certification is made under penalty of perjury.*

2 Dated: (insert date)

3

4 (Print Authorized Relative's Name)

5

6 (Authorized Relative's Signature)

7

8 (Authorized Relative's Address)

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

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

13 (755 ILCS 45/4-3) (from Ch. 110 1/2, par. 804-3)

14 Sec. 4-3. General principles. The health care powers that
15 may be delegated to an agent include, without limitation, all
16 powers an individual may have to be informed about and to
17 consent to or refuse or withdraw any type of health care for
18 the individual and all powers a parent may have to control or
19 consent to health care for a minor child. A health care agency
20 may extend beyond the principal's death if necessary to permit
21 anatomical gift, autopsy, ~~or~~ disposition of remains, or access

1 to medical records. Nothing in this Article shall impair or
2 supersede any legal right or legal responsibility which any
3 person may have to effect the withholding or withdrawal of
4 life-sustaining or death-delaying procedures in any lawful
5 manner, and the provisions of this Article are cumulative in
6 such respect.

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

8 Section 99. Effective date. This Act takes effect October
9 1, 2011."