

SENATE AMENDMENTS

2nd Printing

By: Smithee

H.B. No. 2891

A BILL TO BE ENTITLED

AN ACT

relating to the medical authorization required to release protected health information in a health care liability claim.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 74.052(c), Civil Practice and Remedies Code, is amended to read as follows:

(c) The medical authorization required by this section shall be in the following form and shall be construed in accordance with the "Standards for Privacy of Individually Identifiable Health Information" (45 C.F.R. Parts 160 and 164).

AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

Patient Name: _____ Patient Place of Birth: _____

Patient Address: _____

_____ Street _____ City, State, ZIP

Patient Telephone: _____ Patient E-mail: _____

NOTICE TO PHYSICIAN OR HEALTH CARE PROVIDER: THIS AUTHORIZATION FORM HAS BEEN AUTHORIZED BY THE TEXAS LEGISLATURE PURSUANT TO SECTION 74.052, CIVIL PRACTICE AND REMEDIES CODE. YOU ARE REQUIRED TO PROVIDE THE MEDICAL AND BILLING RECORDS AS REQUESTED IN THIS AUTHORIZATION.

A. I, _____ (name of patient or authorized representative), hereby authorize _____ (name of physician or other health care provider to whom the notice of health care claim is directed) to obtain and disclose (within the parameters set out

1 below) the protected health information and associated billing
2 records described below for the following specific purposes (check
3 all that apply):

4 [~~1.~~] To facilitate the investigation and evaluation
5 of the health care claim described in the accompanying Notice of
6 Health Care Claim. [~~1.~~]

7 [~~2.~~] Defense of any litigation arising out of the
8 claim made the basis of the accompanying Notice of Health Care
9 Claim.

10 Other - Specify: _____

11 B. The health information to be obtained, used, or disclosed
12 extends to and includes the verbal as well as [~~the~~] written and
13 electronic and is specifically described as follows:

14 1. The health information and billing records in the
15 custody of the [~~following~~] physicians or health care providers who
16 have examined, evaluated, or treated _____ (patient) in
17 connection with the injuries alleged to have been sustained in
18 connection with the claim asserted in the accompanying Notice of
19 Health Care Claim.

20 Names and current addresses of treating physicians or
21 health care providers:

22 1. _____

23 2. _____

24 3. _____

25 4. _____

26 5. _____

27 6. _____

1 7. _____
 2 8. _____ [~~(Here list the name and~~
 3 ~~current address of all treating physicians or health care~~
 4 ~~providers).~~]

5 This authorization shall extend to any additional physicians
 6 or health care providers that may in the future evaluate, examine,
 7 or treat _____ (patient) for injuries alleged in connection
 8 with the claim made the basis of the attached Notice of Health Care
 9 Claim;

10 2. The health information and billing records in the
 11 custody of the following physicians or health care providers who
 12 have examined, evaluated, or treated _____ (patient) during a
 13 period commencing five years prior to the incident made the basis of
 14 the accompanying Notice of Health Care Claim.

15 Names [~~(Here list the name]~~ and current addresses
 16 [~~address]~~ of treating [~~such]~~ physicians or health care providers,
 17 if applicable: [~~.->]~~

- 18 1. _____
- 19 2. _____
- 20 3. _____
- 21 4. _____
- 22 5. _____
- 23 6. _____
- 24 7. _____
- 25 8. _____

26 C. Exclusions

- 27 1. Providers excluded from authorization.

1 The [~~Excluded Health Information--the~~] following constitutes
 2 a list of physicians or health care providers possessing health
 3 care information concerning _____ (patient) to whom [~~which~~]
 4 this authorization does not apply because I contend that such
 5 health care information is not relevant to the damages being
 6 claimed or to the physical, mental, or emotional condition of
 7 _____ (patient) arising out of the claim made the basis of the
 8 accompanying Notice of Health Care Claim. List the names [~~Here~~
 9 ~~state "none" or list the name~~] of each physician or health care
 10 provider to whom this authorization does not extend and the
 11 inclusive dates of examination, evaluation, or treatment to be
 12 withheld from disclosure, or state "none":

- 13 1. _____
- 14 2. _____
- 15 3. _____
- 16 4. _____
- 17 5. _____
- 18 6. _____
- 19 7. _____
- 20 8. _____ [→]

21 2. By initialing below, the patient or patient's
 22 personal or legal representative excludes the following
 23 information from this authorization:

- 24 _____ HIV/AIDS test results and/or treatment
- 25 _____ Drug/alcohol/substance abuse treatment
- 26 _____ Mental health records (mental health records
 27 do not include psychotherapy notes)

1 Genetic information (including genetic test
2 results)

3 D. The persons or class of persons to whom the patient's
4 health information and billing records [~~of _____ (patient)~~]
5 will be disclosed or who will make use of said information are:

6 1. Any and all physicians or health care providers
7 providing care or treatment to _____ (patient);

8 2. Any liability insurance entity providing liability
9 insurance coverage or defense to any physician or health care
10 provider to whom Notice of Health Care Claim has been given with
11 regard to the care and treatment of _____ (patient);

12 3. Any consulting or testifying experts employed by or
13 on behalf of _____ (name of physician or health care provider
14 to whom Notice of Health Care Claim has been given) with regard to
15 the matter set out in the Notice of Health Care Claim accompanying
16 this authorization;

17 4. Any attorneys (including secretarial, clerical,
18 experts, or paralegal staff) employed by or on behalf of _____
19 (name of physician or health care provider to whom Notice of Health
20 Care Claim has been given) with regard to the matter set out in the
21 Notice of Health Care Claim accompanying this authorization;

22 5. Any trier of the law or facts relating to any suit
23 filed seeking damages arising out of the medical care or treatment
24 of _____ (patient).

25 E. This authorization shall expire upon resolution of the
26 claim asserted or at the conclusion of any litigation instituted in
27 connection with the subject matter of the Notice of Health Care

1 Claim accompanying this authorization, whichever occurs sooner.

2 F. I understand that, without exception, I have the right to
3 revoke this authorization in writing. I further understand the
4 consequence of any such revocation as set out in Section 74.052,
5 Civil Practice and Remedies Code.

6 G. I understand that the signing of this authorization is
7 not a condition for continued treatment, payment, enrollment, or
8 eligibility for health plan benefits.

9 H. I understand that information used or disclosed pursuant
10 to this authorization may be subject to redisclosure by the
11 recipient and may no longer be protected by federal HIPAA privacy
12 regulations.

13 Name of Patient

14 _____

15 Signature of Patient/Personal or Legal Representative

16 [~~Patient/Representative~~]

17 _____

18 [Date

19 [_____

20 [~~Name of Patient/Representative~~

21 [_____]

22 Description of Personal or Legal Representative's Authority

23 _____

24 Date

25 _____

26 SECTION 2. This Act takes effect immediately if it receives
27 a vote of two-thirds of all the members elected to each house, as

H.B. No. 2891

1 provided by Section 39, Article III, Texas Constitution. If this
2 Act does not receive the vote necessary for immediate effect, this
3 Act takes effect September 1, 2017.

ADOPTED
MAY 24 2017

Lacey Spaul
Secretary of the Senate

By: Smith

H.B. No. 2891

Substitute the following for ___B. No. _____:

By: Charles Perry

C.S. H.B. No. 2891

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3 health information in a health care liability claim.

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6 Code, is amended to read as follows:

7 (c) The medical authorization required by this section
8 shall be in the following form and shall be construed in accordance
9 with the "Standards for Privacy of Individually Identifiable Health
10 Information" (45 C.F.R. Parts 160 and 164).

11 AUTHORIZATION FORM FOR RELEASE OF PROTECTED HEALTH INFORMATION

12 Patient Name: _____ Patient Place of Birth: _____

13 Patient Address: _____

14 _____ Street _____ City, State, ZIP

15 Patient Telephone: _____ Patient E-mail: _____

16 NOTICE TO PHYSICIAN OR HEALTH CARE PROVIDER: THIS
17 AUTHORIZATION FORM HAS BEEN AUTHORIZED BY THE TEXAS LEGISLATURE
18 PURSUANT TO SECTION 74.052, CIVIL PRACTICE AND REMEDIES CODE. YOU
19 ARE REQUIRED TO PROVIDE THE MEDICAL AND BILLING RECORDS AS
20 REQUESTED IN THIS AUTHORIZATION.

21 A. I, _____ (name of patient or authorized
22 representative), hereby authorize _____ (name of physician or
23 other health care provider to whom the notice of health care claim
24 is directed) to obtain and disclose (within the parameters set out

1 below) the protected health information and associated billing
2 records described below for the following specific purposes (check
3 all that apply):

4 [~~1.~~] To facilitate the investigation and evaluation
5 of the health care claim described in the accompanying Notice of
6 Health Care Claim. [~~1.~~]

7 [~~2.~~] Defense of any litigation arising out of the
8 claim made the basis of the accompanying Notice of Health Care
9 Claim.

10 Other - Specify: _____

11 B. The health information to be obtained, used, or disclosed
12 extends to and includes the verbal as well as [~~the~~] written and
13 electronic and is specifically described as follows:

14 1. The health information and billing records in the
15 custody of the [~~following~~] physicians or health care providers who
16 have examined, evaluated, or treated _____ (patient) in
17 connection with the injuries alleged to have been sustained in
18 connection with the claim asserted in the accompanying Notice of
19 Health Care Claim.

20 Names and current addresses of treating physicians or
21 health care providers:

22 1. _____

23 2. _____

24 3. _____

25 4. _____

26 5. _____

27 6. _____

1 7. _____
 2 8. _____ [~~(Here list the name and~~
 3 ~~current address of all treating physicians or health care~~
 4 ~~providers).~~]

5 This authorization extends [~~shall extend~~] to an [~~any~~]
 6 additional physician [~~physicians~~] or health care provider
 7 [~~providers~~] that may in the future evaluate, examine, or treat
 8 _____ (patient) for injuries alleged in connection with the
 9 claim made the basis of the attached Notice of Health Care Claim
 10 only if the claimant gives notice to the recipient of the attached
 11 Notice of Health Care Claim of that additional physician or health
 12 care provider;

13 2. The health information and billing records in the
 14 custody of the following physicians or health care providers who
 15 have examined, evaluated, or treated _____ (patient) during a
 16 period commencing five years prior to the incident made the basis of
 17 the accompanying Notice of Health Care Claim.

18 Names [~~(Here list the name)~~] and current addresses
 19 [~~address~~] of treating [~~such~~] physicians or health care providers,
 20 if applicable: [→]

- 21 1. _____
- 22 2. _____
- 23 3. _____
- 24 4. _____
- 25 5. _____
- 26 6. _____
- 27 7. _____

1 8. _____

2 C. Exclusions

3 1. Providers excluded from authorization.

4 The [~~Excluded Health Information--the~~] following constitutes
5 a list of physicians or health care providers possessing health
6 care information concerning _____ (patient) to whom [~~which~~]
7 this authorization does not apply because I contend that such
8 health care information is not relevant to the damages being
9 claimed or to the physical, mental, or emotional condition of
10 _____ (patient) arising out of the claim made the basis of the
11 accompanying Notice of Health Care Claim. List the names [~~Here~~
12 ~~state "none" or list the name~~] of each physician or health care
13 provider to whom this authorization does not extend and the
14 inclusive dates of examination, evaluation, or treatment to be
15 withheld from disclosure, or state "none":

16 1. _____

17 2. _____

18 3. _____

19 4. _____

20 5. _____

21 6. _____

22 7. _____

23 8. _____ [→]

24 2. By initialing below, the patient or patient's
25 personal or legal representative excludes the following
26 information from this authorization:

27 _____ HIV/AIDS test results and/or treatment

- 1 Drug/alcohol/substance abuse treatment
2 Mental health records (mental health records
3 do not include psychotherapy notes)
4 Genetic information (including genetic test
5 results)

6 D. The persons or class of persons to whom the patient's
7 health information and billing records [~~of~~ (patient)]
8 will be disclosed or who will make use of said information are:

9 1. Any and all physicians or health care providers
10 providing care or treatment to (patient);

11 2. Any liability insurance entity providing liability
12 insurance coverage or defense to any physician or health care
13 provider to whom Notice of Health Care Claim has been given with
14 regard to the care and treatment of (patient);

15 3. Any consulting or testifying experts employed by or
16 on behalf of (name of physician or health care provider
17 to whom Notice of Health Care Claim has been given) with regard to
18 the matter set out in the Notice of Health Care Claim accompanying
19 this authorization;

20 4. Any attorneys (including secretarial, clerical,
21 experts, or paralegal staff) employed by or on behalf of
22 (name of physician or health care provider to whom Notice of Health
23 Care Claim has been given) with regard to the matter set out in the
24 Notice of Health Care Claim accompanying this authorization;

25 5. Any trier of the law or facts relating to any suit
26 filed seeking damages arising out of the medical care or treatment
27 of (patient).

1 E. This authorization shall expire upon resolution of the
2 claim asserted or at the conclusion of any litigation instituted in
3 connection with the subject matter of the Notice of Health Care
4 Claim accompanying this authorization, whichever occurs sooner.

5 F. I understand that, without exception, I have the right to
6 revoke this authorization at any time by giving notice in writing to
7 the person or persons named in Section B above of my intent to
8 revoke this authorization. I understand that prior actions taken
9 in reliance on this authorization by a person that had permission to
10 access my protected health information will not be affected. I
11 further understand the consequence of any such revocation as set
12 out in Section 74.052, Civil Practice and Remedies Code.

13 G. I understand that the signing of this authorization is
14 not a condition for continued treatment, payment, enrollment, or
15 eligibility for health plan benefits.

16 H. I understand that information used or disclosed pursuant
17 to this authorization may be subject to redisclosure by the
18 recipient and may no longer be protected by federal HIPAA privacy
19 regulations.

20 Name of Patient

21 _____

22 Signature of Patient/Personal or Legal Representative

23 [~~Patient/Representative~~]

24 _____

25 [Date

26 [_____]

27 [~~Name of Patient/Representative~~]

1 []

2 Description of Personal or Legal Representative's Authority

3 _____

4 Date

5

6 SECTION 2. This Act takes effect immediately if it receives
7 a vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. If this
9 Act does not receive the vote necessary for immediate effect, this
10 Act takes effect September 1, 2017.

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 25, 2017

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2891 by Smithee (Relating to the medical authorization required to release protected health information in a health care liability claim.), **As Passed 2nd House**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to require that certain information be included in the release authorization form used to obtain protected health information in a health care liability claim. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished with existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, SD, KCA, LBO, PBO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 17, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2891 by Smithee (Relating to the medical authorization required to release protected health information in a health care liability claim.), **Committee Report 2nd House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to require that certain information be included in the release authorization form used to obtain protected health information in a health care liability claim. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished with existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, KCA, LBO, PBO

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 8, 2017

TO: Honorable Charles Schwertner, Chair, Senate Committee on Health & Human Services

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2891 by Smithee (Relating to the medical authorization required to release protected health information in a health care liability claim.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to require that certain information be included in the release authorization form used to obtain protected health information in a health care liability claim. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished with existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, KCA, LBO, PBO

**LEGISLATIVE BUDGET BOARD
Austin, Texas**

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

April 10, 2017

TO: Honorable John T. Smithee, Chair, House Committee on Judiciary & Civil Jurisprudence

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2891 by Smithee (Relating to the medical authorization required to release protected health information in a health care liability claim.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Civil Practice and Remedies Code to require that certain information be included in the release authorization form used to obtain protected health information in a health care liability claim. Based on the analysis of the Office of Court Administration, duties and responsibilities associated with implementing the provisions of the bill could be accomplished with existing resources.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council

LBB Staff: UP, LBO, PBO