

Regular Session, 2012

SENATE BILL NO. 281

BY SENATOR JOHNS

INSURANCE DEPARTMENT. Provides for confidentiality of records and reporting of complaints against persons and entities subject to jurisdiction of the Department of Insurance. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 22:42.1 and 43(A) and (B), relative to confidentiality of records
3 in the custody of the Department of Insurance; to provide with respect to disclosure
4 of categorical descriptors relative to complaints filed against all persons and entities
5 subject to the jurisdiction of the department; and to provide for related matters.

6 Be it enacted by the Legislature of Louisiana:

7 Section 1. R.S. 22:42.1 and 43(A) and (B) are hereby amended and reenacted to read
8 as follows:

9 §42.1. Confidentiality of ~~health~~ information; exceptions

10 A. Notwithstanding the provisions of Subsections B and C of this Section,
11 the commissioner shall comply with the provisions of R.S. 22:43; however, no
12 identifier listed in Subsection E of this Section of any of the following persons
13 shall be part of the separate file, record, or report required pursuant to R.S.
14 22:43 when recording information about any complaint or the compilation of
15 statistical data:

16 (1) The individual who is the subject of any health information, health
17 information record, or the working papers, recorded information, documents,

1 or copies thereof or related thereto.

2 (2) Anyone identified as, or who it is reasonable to believe is, a relative,
 3 employer, or household member of the individual who is described in
 4 Paragraph (1) of this Subsection, where the relative, employer, or household
 5 member is listed in any record described in Paragraph (1) of this Subsection.

6 B.(1) All protected health information in the custody of the Department of
 7 Insurance shall be confidential and privileged, shall not be subject to disclosure
 8 under Title 44 of the Louisiana Revised Statutes of 1950, and shall not be subject to
 9 subpoena. Confidentiality and privilege shall be strictly maintained by the
 10 commissioner of insurance and all employees of the department, except as provided
 11 in Subsection B of this Section, and the protected health information shall be used
 12 exclusively for the purpose of discharging the duties and responsibilities of the
 13 department under this Title. **No part of any health information, health**
 14 **information record, or the working papers, recorded information, documents,**
 15 **or copies thereof or related thereto, produced by, obtained by, or disclosed to**
 16 **the commissioner, or any other person, and in the custody of the commissioner**
 17 **shall be disclosed under Title 44 of the Louisiana Revised Statutes of 1950.**

18 (2) "~~Protected health~~ **Health** information" as used in this Section means
 19 either of the following: **any information in any form or medium, transmitted or**
 20 **maintained in any manner, and in the custody of the department that**

21 (a) ~~Any health or medical information, documents, or records designated as~~
 22 ~~confidential by state or federal law.~~

23 (b) ~~Any information, whether oral, written, electronic, visual, or in any other~~
 24 ~~form, including demographic information collected from an individual, that is in the~~
 25 ~~department's possession which does both of the following:~~

26 (i) ~~Relates~~ **relates** to the past, present, or future physical or mental health or
 27 condition of an individual, the provision of health care, **including medications and**
 28 **prescriptions,** to an individual, or the past, present, or future payment for the
 29 provision of health care, **including medications and prescriptions,** to an individual.

1 (ii) Reveals the identity of the individual whose health care is the subject of
2 the information, or there is a reasonable basis to believe the information could be
3 utilized, either alone or with other information that is or should reasonably be known
4 to be available to predictable recipients of the information to reveal the identity of
5 that individual.

6 **C. No records, or the working papers, recorded information, documents,**
7 **or copies thereof or related thereto, produced by, obtained by, or disclosed to**
8 **the commissioner, or any other person, in the course of or after the resolution**
9 **of a complaint against any person or entity subject to the jurisdiction of the**
10 **Department of Insurance and which are in the custody of the commissioner,**
11 **shall be disclosed under Title 44 of the Louisiana Revised Statutes of 1950.**

12 **BD.** (1) Nothing in this Section shall prohibit the communication of facts or
13 documents that are part of an individual's protected health information to the
14 individual or his representative. When authorized in writing by the individual, such
15 facts and documents may also be released to the party designated in the written
16 authorization: **health information or health information records, or copies**
17 **thereof, in the custody of the commissioner to:**

18 **(a) The individual who is the subject of the health information or health**
19 **information record.**

20 **(b) The authorized representative of the individual who is the subject of**
21 **the health information or health information record.**

22 **(c) A third party where written authorization is provided by the**
23 **individual who is the subject of the health information record or by the**
24 **authorized representative of the individual who is the subject of the health**
25 **information or health information record.**

26 **(2) Nothing in this Section shall prohibit the disclosure of copies of the**
27 **complaint filed by the complainant or insured, the response by the person or**
28 **entity subject to the jurisdiction of the department, or the final disposition to:**

29 **(a) The complainant or insured.**

1 **(b) The authorized representative of the complainant or insured.**

2 **(c) A third party where written authorization is provided by the**
3 **complainant or insured or by the authorized representative of the complainant**
4 **or insured.**

5 (23) Nothing in this Section shall prohibit the communication of facts,
6 documents, or other information that is part of ~~an individual's protected health~~
7 ~~information if requested by:~~ **a record described in this Section, or the working**
8 **papers, recorded information, documents, or copies thereof or related thereto,**
9 **produced by, obtained by, or disclosed to the commissioner, or any other person**
10 **and in the custody of the commissioner to** ~~a federal or state~~ **or federal** prosecuting
11 ~~attorney;~~ ~~the office of the state police, public safety services, Department of Public~~
12 ~~Safety and Corrections, in the conduct of an insurance fraud investigation;~~ **a law**
13 **enforcement agency, the** ~~office of the state inspector general;~~ ~~the~~ **state** legislative
14 ~~auditor;~~ ~~or the attorney general of this state~~ **in connection with their statutory**
15 **authority, or to any agency or communication district for the purpose of**
16 **achieving coordinated and effective protection of the public health, safety, or**
17 **welfare.** The department shall also share information with any state or federal
18 agency for the purpose of investigating or determining **insurance or** tax fraud or the
19 offset of any governmental benefit or with any other government entity authorized
20 by law to conduct any audit, investigation, or similar activity in connection with the
21 administration of any state or federally funded program.

22 (34) Nothing in this Section shall prohibit the **commissioner from using**
23 **any records or other information in the custody of the department in the**
24 **furtherance of any regulatory or legal action brought as part of the**
25 **commissioner's official duties** ~~communication of facts, documents, or other~~
26 ~~information which are part of an individual's protected health information pursuant~~
27 ~~to an order of a court of competent jurisdiction issued after a contradictory hearing~~
28 ~~based upon a finding that the records should be released in the interest of justice.~~

29 (4) ~~Nothing in this Section shall prevent the use of protected health~~

1 ~~information for the compilation of statistical data in which the identity of the~~
2 ~~individual is not disclosed.~~

3 **E. The identifiers described in this Section as confidential shall be the**
4 **following:**

5 **(1) Names.**

6 **(2) All geographic subdivisions smaller than a state, including street**
7 **address, city, county or parish, precinct, zip code, and any equivalent geocodes,**
8 **except for the initial three digits of a zip code if, according to the current**
9 **publicly available data from the Bureau of the Census:**

10 **(a) The geographic unit formed by combining all zip codes with the same**
11 **three initial digits contains more than 20,000 people; and**

12 **(b) The initial three digits of a zip code for all such geographic units**
13 **containing 20,000 or fewer people is changed to 000.**

14 **(3) All elements of dates, except year, for dates directly related to an**
15 **individual, including birth date, admission date, discharge date, date of death,**
16 **and all ages over eighty-nine and all elements of dates, including year, indicative**
17 **of such age, except that such ages and elements may be aggregated into a single**
18 **category of age ninety or older.**

19 **(4) Telephone numbers.**

20 **(5) Facsimile numbers.**

21 **(6) Electronic mail addresses.**

22 **(7) Social security numbers.**

23 **(8) Medical record numbers.**

24 **(9) Health plan beneficiary numbers.**

25 **(10) Account numbers.**

26 **(11) Certificate and license numbers.**

27 **(12) Vehicle identifiers and serial numbers, including license plate**
28 **numbers.**

29 **(13) Device identifiers and serial numbers.**

1 **(14) Web Universal Resource Locators (URLs).**

2 **(15) Internet Protocol (IP) address numbers.**

3 **(16) Biometric identifiers, including finger- and voice prints.**

4 **(17) Full face photographic images and any comparable images.**

5 **(18) Any other unique identifying number, characteristic, or code.**

6 **F. The retention period for records described in this Section shall be no**
 7 **less than three calendar years, and the records may be disposed of thereafter**
 8 **according to R.S. 44:401 et seq.**

9 §43. Complaints against ~~insurers~~ **persons and entities subject to the jurisdiction**
 10 **of the Department of Insurance;** file by ~~company~~ **person or entity**
 11 **subject to jurisdiction;** public information

12 A. The department shall file all complaints which it receives against ~~any~~
 13 ~~named insurer~~ **a person or entity subject to the jurisdiction of the department** in
 14 a separate file for each **such person or entity subject to the jurisdiction of the**
 15 **department** ~~insurer~~. This record shall be maintained in such a manner as to permit
 16 the public to readily ascertain information concerning complaints against **any person**
 17 **or entity subject to the jurisdiction of the department** ~~insurance companies,~~
 18 without the necessity of reviewing each individual complaint. **The retention period**
 19 **for each record described in this Section shall be no less than three calendar**
 20 **years, and any record may be disposed of thereafter according to R.S. 44:401**
 21 **et seq.** The commissioner shall avail himself of such computer equipment as he has
 22 available to perform this task.

23 B.(1) The record required by this Section shall contain **the following**
 24 information ~~including but not limited to the following:~~

25 (a) Date of complaint.

26 (b) Name of the ~~company~~ **respondent person or entity** against whom the
 27 complaint is lodged.

28 (c) ~~Name~~ **Category** of the complainant **or insured.**

29 **(d) Category of the respondent person or entity against whom the**

1 **complaint is lodged.**

2 ~~(de)~~ Nature of **Reason for** the complaint.

3 ~~(ef)~~ Action and findings by the department **Disposition.**

4 ~~(fg)~~ Date of any such action disposition.

5 ~~(gh)~~ The response of the insurance company **respondent, person or entity**
6 **against whom the complaint is lodged in addition to the type of coverage.**

7 **(i) Type of coverage.**

8 **(2) It shall be sufficient for compliance with this Section that the**
9 **commissioner uses the same coded categorical descriptors established by the**
10 **National Association of Insurance Commissioners (NAIC) Complaint Database**
11 **System (CDS) for the commissioner's database fields for the following**
12 **categorical descriptors:**

13 **(a) Category of the complainant or insured.**

14 **(b) Category of the respondent person or entity.**

15 **(c) Type of coverage.**

16 **(d) Reason for complaint.**

17 **(e) Disposition.**

18 **(3) Where a categorical descriptor for the category of the complainant**
19 **or insured, category of the respondent person or entity, type of coverage, reason**
20 **for complaint, or disposition is unique to the state of Louisiana, that unique**
21 **categorical descriptor shall be reported, and the commissioner shall be in**
22 **compliance with this Section when using that unique categorical descriptor.**

23 **(4) Where the response of the person or entity against whom the**
24 **complaint is lodged is reported, it shall be sufficient for the commissioner to**
25 **disclose the following applicable categorical descriptors:**

26 **(a) Respondent agreed with complainant.**

27 **(b) Respondent disagreed with complainant.**

28 **(c) Respondent asserted that insufficient information was provided in**
29 **the complaint.**

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Cheryl Horne.

DIGEST

Johns (SB 281)

Proposed law prohibits identification of individuals who are the subject of health information records in the custody of the Department of Insurance (DOI) utilizing the same list of identifiers listed in the privacy rules for identification under the Health Insurance Portability and Accountability Act of 1996 and any amendments thereto and the privacy rules for identification under the Health Information Technology for Economic and Clinical Health Act of 2009 and any amendments thereto in response to a public records request.

Proposed law provides that it is sufficient for the commissioner to report complaints against persons and entities under the jurisdiction of DOI by utilizing the same National Association of Insurance Commissioners (NAIC) Complaint Database System (CDS) categorical descriptors and any categorical DOI descriptors unique to the state of Louisiana used by DOI in its routine reporting to the NAIC CDS. Any other unique categorical descriptors used by the DOI (i.e., response of the respondent) will also be provided with information about complaints against persons and entities under the jurisdiction of DOI.

Proposed law requires complaint reporting of all persons and entities subject to jurisdiction of DOI rather than only of insurers and companies.

Proposed law provides requirements for compliance with proposed law for complaint reporting and the utilization of categorical descriptors established by the NAIC CDS.

Proposed law specifically adds type of coverage as a categorical descriptor for complaint reporting under proposed law.

Proposed law provides that it is sufficient for the commissioner to report complaints against persons and entities under the jurisdiction of the department by utilizing the NAIC CDS categorical descriptors which DOI Information Technology Office is now equipped to utilize and has mapped to and is pre-staged for implementation with NAIC CDS on a projected completion date of no later than January 2013.

Proposed law includes examples of categorical descriptors for "completion of corrective action" such as: policy reinstated, credit report reordered, corrective action plan submitted to and approved by insurance department, surcharge removed, audit redone, company paid claim, company reinstated policy, company or producer refunded premium, the company allowed service as in-network or the company updated system to reflect updated CPT codes.

Proposed law provides that the retention period for records of complaints and the records utilizing the database is no less than three calendar years.

Proposed law provides that the computer program employed by the commissioner shall, at a minimum, be able to sort the information in this database on any of the fields described in proposed law and print a written report no later than 60 days from the effective date of proposed law.

Proposed law provides that where there was a final disposition of a complaint prior to the effective date of proposed law and the record of that complaint is in the custody of the department, it shall be sufficient for the commissioner to report the information required

under proposed law utilizing the database described in proposed law. Further provides that it shall not be necessary for those records of complaints to be reviewed for the purpose of applying new categorical descriptors or for new categorical descriptors to be applied to those complaints.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 22:42.1 and 43(A) and (B))

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Insurance to the original bill.

1. Makes technical changes.