

CHAPTER 1226**MENTAL HEALTH INFORMATION DISCLOSURE***S.F. 2284*

AN ACT relating to the disclosure of mental health information and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. NEW SECTION. 228.7 DISCLOSURES FOR CLAIMS ADMINISTRATION AND PEER REVIEW — SAFEGUARDS — PENALTY.

1. Mental health information may be disclosed, in accordance with the prior written consent of the patient or the patient's legal representative, by a mental health professional, data collector, or employee or agent of a mental health professional, a data collector, or a mental health facility to a third-party payor or to a peer review organization if the third-party payor or the peer review organization has filed a written statement with the commissioner of insurance in which the filer agrees to:

a. Instruct its employees and agents to maintain the confidentiality of mental health information and of the penalty for unauthorized disclosure.

b. Comply with the limitations on use and disclosure of the information specified in subsection 2 of this section.

c. Destroy the information when it is no longer needed for the purposes specified in subsection 2 of this section.

2. An employee or agent of a third-party payor or of a peer review organization shall not use mental health information or disclose mental health information to any person, except to the extent necessary to administer claims submitted or to be submitted for payment to the third-party payor, to conduct a utilization and quality control review of mental health care services provided or proposed to be provided, to conduct an audit of claims paid, or as otherwise authorized by law.

Employees of a self-insured employer, and agents of a self-insured employer which have not filed a statement with the commissioner of insurance pursuant to subsection 1, shall not be granted routine or ongoing access to mental health information unless the employees or agents have signed a statement indicating that they are aware that the information shall not be used or disclosed except as provided in this subsection and that they are aware of the penalty for unauthorized disclosure.

3. An employee or agent of a third-party payor or a peer review organization who willfully uses or discloses mental health information in violation of subsection 2 of this section is guilty of a serious misdemeanor, and, notwithstanding section 903.1, the sentence for a person convicted under this subsection is a fine not to exceed five hundred dollars in the case of a first offense, and not to exceed five thousand dollars in the case of each subsequent offense.

Sec. 2. Section 228.1, subsections 1 and 8, Code 1987, are amended to read as follows:

1. "Administrative information" means an individual's name, identifying number, age, sex, address, dates and character of professional services provided to the individual, and fees for the professional services, third-party payor number of a patient, if known, name and location of the facility where treatment is received, the date of the individual's admission to the facility, and the name of the individual's attending physician or attending mental health professional.

8. "Third-party payor" means a person which provides accident and health benefits or medical, surgical, or hospital benefits, whether on an indemnity, reimbursement, service, or prepaid basis, including but not limited to, insurers, nonprofit health service corporations, health maintenance organizations, governmental agencies, and self-insured employers.

Sec. 3. Section 228.1, Code 1987, is amended by adding the following new subsections:

NEW SUBSECTION. 9. "Peer review organization" means a utilization and quality control peer review organization that has a contract with the federal secretary of health and human services pursuant to Title XI, part B, of the federal Social Security Act to review health care services paid for in whole or in part under the Medicare program established by Title XVIII of the federal Social Security Act, or another organization of licensed health care professionals performing utilization and quality control review functions.

NEW SUBSECTION. 10. "Self-insured employer" means a person which provides accident and health benefits or medical, surgical, or hospital benefits on a self-insured basis to its own employees or to employees of an affiliated company or companies and which does not otherwise provide accident and health benefits or medical, surgical, or hospital benefits.

Sec. 4. Section 228.2, Code 1987, is amended to read as follows:

228.2 MENTAL HEALTH INFORMATION DISCLOSURE PROHIBITED – EXCEPTIONS – RECORD OF DISCLOSURE.

1. Except as specifically authorized in section 228.3, 228.5, ~~or~~ 228.6, or 228.7, a mental health professional, data collector, or employee or agent of a mental health professional, of a data collector, or of or for a mental health facility shall not disclose or permit the disclosure of mental health information.

2. Upon disclosure of mental health information pursuant to section 228.3, 228.5, ~~or~~ 228.6, or 228.7, the person disclosing the mental health information shall enter a notation on and maintain the notation with the individual's record of mental health information, stating the date of the disclosure and the name of the recipient of mental health information. The notation shall include all of the following:

- a. ~~The date of the disclosure.~~
- b. ~~The name of the recipient of the mental health information.~~
- c. ~~A description of the contents of the disclosure.~~

The person disclosing the mental health information shall give the recipient of the information a statement which informs the recipient that disclosures may only be made pursuant to the written authorization of an individual or an individual's legal representative, or as otherwise provided in this chapter, that the unauthorized disclosure of mental health information is unlawful, and that civil damages and criminal penalties may be applicable to the unauthorized disclosure of mental health information.

3. A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure in section 228.3, 228.5, ~~or~~ 228.6, or 228.7.

Sec. 5. Section 228.2, subsection 3, Code 1987, is amended to read as follows:

3. A recipient of mental health information shall not disclose the information received, except as specifically authorized for initial disclosure in section 228.3, 228.5, or 228.6. However, mental health information may be transferred at any time to another facility, physician, or mental health professional in cases of a medical emergency or if the individual or the individual's legal representative requests the transfer in writing for the purposes of receipt of medical or mental health professional services, at which time the requirements of section 228.2, subsection 2, shall be followed.

Sec. 6. Section 228.3, subsection 1, paragraph d, Code 1987, is amended to read as follows:

d. Specify the length of time for which the authorization is valid ~~and whether the authorization is renewable.~~

Sec. 7. Section 228.3, subsection 2, Code 1987, is amended to read as follows:

2. A copy of the authorization shall:

a. Be provided to the individual ~~and~~ or to the person legal representative of the individual authorizing the disclosure.

b. Accompany all disclosures.

e b. Be included in the individual's record of mental health information.

Sec. 8. Section 228.5, subsections 1 and 3, Code 1987, are amended to read as follows:

1. An individual or an individual's legal representative shall be informed that mental health information relating to the individual may be disclosed to employees or agents of or for the same mental health facility if and to the extent necessary to facilitate the provision of administrative and professional services to the individual.

3. A mental health professional or an employee of or agent for a mental health facility may disclose mental health information if necessary for the purpose of conducting scientific and data research, management audits, or program evaluations of the mental health professional or mental health facility, to persons who have demonstrated and provided written assurances of their ability to ensure compliance with the requirements of this chapter. The persons shall not identify, directly or indirectly, an individual in any report of the research, audits, or evaluations, or otherwise disclose individual identities in any manner. A disclosure under this section is not subject to the requirements of section 228.2, subsection 2, with the exception that a person receiving mental health information under this section shall be provided a statement prohibiting redisclosure of information unless otherwise authorized by this chapter.

Sec. 9. Section 228.3, subsection 3, Code 1987, is amended by striking the subsection.

Approved May 12, 1988

CHAPTER 1227

POLYGRAPH EXAMINATION PROHIBITION

H.F. 102

AN ACT relating to the prohibition of polygraph examinations as a condition of employment, and providing a penalty.

Be It Enacted by the General Assembly of the State of Iowa:

Section 1. Section 730.4, Code 1987, is amended by striking the section and inserting in lieu thereof the following:

730.4 POLYGRAPH EXAMINATION PROHIBITED.

1. As used in this section, "polygraph examination" means any procedure which involves the use of instrumentation or a mechanical or electrical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these, and includes a lie detector or similar test.

2. An employer shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, knowingly do any of the following:

a. Request or require that an employee or applicant for employment take or submit to a polygraph examination.

b. Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.

c. Request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this section.

3. Subsection 2 does not apply to the state or a political subdivision of the state when in the process of selecting a candidate for employment as a peace officer or a corrections officer.