

House File 448 - Introduced

HOUSE FILE 448
BY COMMITTEE ON HUMAN
RESOURCES

(SUCCESSOR TO HF 231)

A BILL FOR

1 An Act relating to confidential communications between an
2 emergency medical care provider and a patient.
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 232.96, subsection 5, Code 2015, is
2 amended by striking the subsection and inserting in lieu
3 thereof the following:

4 5. Sections 622.9 and 622.10 and any other statute or rule
5 of evidence which excludes or makes privileged the testimony
6 of a husband or wife against the other or the testimony of
7 a health practitioner or mental health professional as to
8 confidential communications do not apply to evidence at an
9 adjudicatory hearing.

10 Sec. 2. Section 622.10, subsections 1, 2, 3, and 5, Code
11 2015, are amended to read as follows:

12 1. A practicing attorney, counselor, ~~physician, surgeon,~~
13 ~~physician assistant, advanced registered nurse practitioner~~
14 health practitioner, mental health professional, or the
15 stenographer or confidential clerk of any such person, who
16 obtains information by reason of the person's employment,
17 or a member of the clergy shall not be allowed, in giving
18 testimony, to disclose any confidential communication properly
19 entrusted to the person in the person's professional capacity,
20 and necessary and proper to enable the person to discharge the
21 functions of the person's office according to the usual course
22 of practice or discipline.

23 2. The prohibition does not apply to cases where the
24 person in whose favor the prohibition is made waives the
25 rights conferred; nor does the prohibition apply to ~~physicians~~
26 ~~or surgeons, physician assistants, advanced registered~~
27 ~~nurse practitioners~~ health practitioners, mental health
28 professionals, or to the stenographer or confidential clerk
29 of any ~~physicians or surgeons, physician assistants, advanced~~
30 ~~registered nurse practitioners, or mental health professionals~~
31 such person, in a civil action in which the condition of the
32 person in whose favor the prohibition is made is an element
33 or factor of the claim or defense of the person or of any
34 party claiming through or under the person. The evidence is
35 admissible upon trial of the action only as it relates to the

1 condition alleged.

2 3. *a.* In a civil action in which the condition of the
3 plaintiff in whose favor the prohibition is made is an element
4 or factor of the claim or defense of the adverse party or of
5 any party claiming through or under the adverse party, the
6 adverse party shall make a written request for records relating
7 to the condition alleged upon the plaintiff's attorney for a
8 legally sufficient patient's waiver under federal and state
9 law. Upon receipt of a written request, the plaintiff shall
10 execute a legally sufficient patient's waiver and release it
11 to the adverse party making the request within sixty days of
12 receipt of the written request. The patient's waiver may
13 require a ~~physician or surgeon, physician assistant, advanced~~
14 ~~registered nurse practitioner,~~ health practitioner or mental
15 health professional to do all of the following:

16 (1) Provide a complete copy of the patient's records
17 including but not limited to any reports or diagnostic imaging
18 relating to the condition alleged.

19 (2) Consult with the attorney for the adverse party prior
20 to providing testimony regarding the plaintiff's medical
21 history and the condition alleged and opinions regarding health
22 etiology and prognosis for the condition alleged subject to the
23 limitations in paragraphs "c" and "e".

24 *b.* If a plaintiff fails to sign a waiver within the
25 prescribed time period, the court may order disclosure or
26 compliance. The failure of a party to comply with the court's
27 order may be grounds for dismissal of the action or any other
28 relief authorized under the rules of civil procedure.

29 *c.* Any ~~physician or surgeon, physician assistant, advanced~~
30 ~~registered nurse practitioner,~~ health practitioner or mental
31 health professional who provides records, provides information
32 during consultation, or otherwise responds in good faith to a
33 request pursuant to paragraph "a" shall be immune with respect
34 to all civil or criminal penalties, claims, or actions of any
35 kind with respect to this section.

1 ~~d. Any physician or surgeon, physician assistant, advanced~~
2 ~~registered nurse practitioner, health practitioner~~ or mental
3 health professional who provides records or consults with the
4 attorney for any party shall be entitled to charge a reasonable
5 fee for production of the records, diagnostic imaging,
6 and consultation. Any party seeking consultation shall be
7 responsible for payment of all charges. The fees for copies of
8 any records shall be as specified in subsection 6.

9 ~~e. Defendant's~~ The defendant's counsel shall provide
10 a written notice to the plaintiff's attorney in a manner
11 consistent with the Iowa rules of civil procedure providing for
12 notice of deposition at least ten days prior to any meeting
13 with the plaintiff's ~~physician or surgeon, physician assistant,~~
14 ~~advanced registered nurse practitioner, health practitioner~~
15 or mental health professional. ~~Plaintiff's~~ The plaintiff's
16 attorney has the right to be present at all such meetings, or
17 participate in telephonic communication with the ~~physician~~
18 ~~or surgeon, physician assistant, advanced registered nurse~~
19 ~~practitioner, health practitioner~~ or mental health professional
20 and the attorney for the defendant. Prior to scheduling
21 any meeting or engaging in any communication with the
22 ~~physician or surgeon, physician assistant, advanced registered~~
23 ~~nurse practitioner, health practitioner~~ or mental health
24 professional, the attorney for the defendant shall confer with
25 the plaintiff's attorney to determine a mutually convenient
26 date and time for such meeting or telephonic communication.
27 ~~Plaintiff's~~ The plaintiff's attorney may seek a protective
28 order structuring all communication by making application to
29 the court at any time.

30 ~~f. The provisions of this subsection do not apply to actions~~
31 or claims brought pursuant to chapter 85, 85A, or 85B.

32 5. If an adverse party desires either to call as a
33 witness at the trial of the action or the oral deposition,
34 either discovery or evidentiary, of a ~~physician or surgeon,~~
35 ~~physician assistant, advanced registered nurse practitioner,~~

1 health practitioner or mental health professional to which
2 the prohibition would otherwise apply, or the stenographer
3 or confidential clerk of a ~~physician or surgeon, physician~~
4 ~~assistant, advanced registered nurse practitioner, or mental~~
5 ~~health professional or desires to call a physician or surgeon,~~
6 ~~physician assistant, advanced registered nurse practitioner,~~
7 ~~or mental health professional to which the prohibition would~~
8 ~~otherwise apply or the stenographer or confidential clerk of a~~
9 ~~physician or surgeon, physician assistant, advanced registered~~
10 ~~nurse practitioner, or mental health professional as a witness~~
11 ~~at the trial of the action~~ any such person, the adverse party
12 shall file an application with the court for permission to
13 do so. The court upon hearing, which shall not be ex parte,
14 shall grant permission unless the court finds that the evidence
15 sought does not relate to the condition alleged. At the
16 request of any party or at the request of the deponent, the
17 court shall fix a reasonable fee to be paid to a ~~physician~~
18 ~~or surgeon, physician assistant, advanced registered nurse~~
19 ~~practitioner,~~ health practitioner or mental health professional
20 by the party taking the deposition or calling the witness.

21 Sec. 3. Section 622.10, subsection 6, paragraph e,
22 subparagraph (2), Code 2015, is amended to read as follows:

23 (2) "*Provider*" means any ~~physician or surgeon, physician~~
24 ~~assistant, advanced registered nurse practitioner~~ health
25 practitioner, mental health professional, hospital, nursing
26 home, or other person, entity, facility, or organization that
27 furnishes, bills, or is paid for health care in the normal
28 course of business.

29 Sec. 4. Section 622.10, subsection 7, Code 2015, is amended
30 to read as follows:

31 7. For the purposes of this section, ~~"mental health~~
32 ~~professional"~~:

33 a. "Emergency medical care provider" means the same as
34 defined in section 147A.1.

35 b. "Health practitioner" means a physician, surgeon,

1 physician assistant, advanced registered nurse practitioner, or
2 emergency medical care provider.

3 c. "Mental health professional" means a psychologist
4 licensed under chapter 154B, a registered nurse licensed under
5 chapter 152, a social worker licensed under chapter 154C, a
6 marital and family therapist licensed under chapter 154D, a
7 mental health counselor licensed under chapter 154D, or an
8 individual holding at least a master's degree in a related
9 field as deemed appropriate by the board of behavioral science.

10 EXPLANATION

11 The inclusion of this explanation does not constitute agreement with
12 the explanation's substance by the members of the general assembly.

13 This bill amends Code section 622.10 to prohibit an
14 emergency medical care provider from disclosing confidential
15 information which a patient disclosed to the emergency
16 medical care provider in the emergency medical care provider's
17 professional capacity. The privilege the bill creates between
18 a patient and an emergency medical care provider is identical
19 to the privilege that exists under current law between a
20 patient and a physician, surgeon, physician assistant, or
21 advanced registered nurse practitioner.

22 The bill defines "emergency medical care provider" as
23 the same as defined in Code section 147A.1, or an individual
24 trained to provide emergency and nonemergency medical care at
25 the emergency medical responder, emergency medical technician,
26 advanced emergency medical technician, paramedic, or other
27 certification levels adopted by rule by the department of
28 public health, who has been issued a certificate by the
29 department.

30 The bill provides several exceptions to the prohibition.
31 First, the patient may waive the prohibition. The prohibition
32 does not apply in a civil action in which the condition of
33 the patient is an element or factor of the claim or defense
34 of the patient. In a civil action in which the patient is a
35 plaintiff and the patient's condition is an element or factor

1 of the claim or defense of the adverse party, the bill provides
2 the procedure by which the adverse party may request or compel
3 the disclosure of the confidential communication made by the
4 patient to the emergency medical care provider.

5 Pursuant to Code section 232.74, the privilege does not
6 apply to evidence regarding a child's injuries or the cause of
7 such injuries in any judicial proceeding, civil or criminal,
8 which results from a report pursuant to Code chapter 232,
9 relating to juvenile justice. Finally, the privilege does not
10 apply in cases involving a petition which alleges that a child
11 is a child in need of assistance.