



# House of Representatives

General Assembly

**File No. 113**

January Session, 2009

Substitute House Bill No. 6530

*House of Representatives, March 19, 2009*

The Committee on Insurance and Real Estate reported through REP. FONTANA, S. of the 87th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## **AN ACT CONCERNING TRANSPARENCY IN HEALTH INSURANCE CLAIMS DATA.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective July 1, 2009*) (a) As used in this section:
- 2 (1) "Employer" means any person, firm, corporation, limited liability  
3 company, partnership or association actively engaged in business for  
4 at least three consecutive months who, on at least fifty per cent of its  
5 working days during the preceding twelve months, employed more  
6 than fifty full-time employees.
- 7 (2) "Governmental entity" means the state or any political  
8 subdivision of the state.
- 9 (b) (1) Each insurer, health care center, hospital service corporation,  
10 medical service corporation or other entity delivering, issuing for  
11 delivery, renewing, amending or continuing in this state any group  
12 health insurance policy shall disclose to an employer or governmental

13 entity sponsoring such policy, upon request by such employer or  
14 governmental entity, the following information for the most recent  
15 thirty-six month period or for the entire period of coverage, whichever  
16 is shorter, in a format as set forth in subsection (c) of this section:

17 (A) All data on claims incurred by such policy sponsored by such  
18 employer or governmental entity, including claims experience for  
19 medical, dental and pharmacy benefits, as applicable;

20 (B) Premiums paid by such employer or governmental entity by  
21 month; and

22 (C) The number of insureds by coverage tier by month, including,  
23 but not limited to, single, two-person and family including  
24 dependents.

25 (2) Such insurer, health care center, hospital service corporation,  
26 medical service corporation or other entity shall not be required to  
27 provide such information more than once in any twelve-month period.

28 (c) An insurer, health care center, hospital service corporation,  
29 medical service corporation or other entity as specified in subsection  
30 (b) of this section shall provide the information required under  
31 subsection (b) of this section: (1) In a written report; (2) through an  
32 electronic file transmitted by secure electronic mail or a file transfer  
33 protocol site; or (3) through a secure web site or web site portal that is  
34 accessible by an employer or governmental entity insured by such  
35 insurer, health care center, hospital service corporation, medical  
36 service corporation or other entity. All such information shall be  
37 complete and include all data available to such insurer, health care  
38 center, hospital service corporation, medical service corporation or  
39 other entity for the time period requested.

40 (d) Nothing in this section shall require an insurer, health care  
41 center, hospital service corporation, medical service corporation or  
42 other entity as specified in subsection (b) of this section to disclose any  
43 information required to be kept confidential by law.

44 (e) Any claim information submitted to a governmental entity in  
 45 accordance with this section shall be confidential by law and  
 46 privileged and shall not be subject to disclosure under section 1-210 of  
 47 the general statutes, subject to subpoena, or subject to discovery or be  
 48 admissible in evidence in any private civil action, except that an  
 49 employee organization, as defined in section 5-270 or 7-467 of the  
 50 general statutes, that is the exclusive bargaining representative of the  
 51 employees of a governmental entity shall be entitled to receive claim  
 52 information from such governmental entity in order to fulfill its duties  
 53 to bargain collectively pursuant to section 5-271 or 7-469 of the general  
 54 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	New section

**Statement of Legislative Commissioners:**

In subsection (b)(1), "sponsoring" was inserted in lieu of "insured under" for accuracy, in subsection (b)(1)(A), "policy sponsored by such" was inserted after "such" for accuracy, and in subsection (e), citations to sections 5-270 and 5-271 were inserted for accuracy.

**INS**      *Joint Favorable Subst.*

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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

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***OFA Fiscal Note***

***State Impact:*** None

***Municipal Impact:*** None

***Explanation***

The provisions of this bill require health insurers and similar entities to disclose claims data, within limitations provided, and does not result in a fiscal impact.

***The Out Years***

***State Impact:*** None

***Municipal Impact:*** None

**OLR Bill Analysis****sHB 6530*****AN ACT CONCERNING TRANSPARENCY IN HEALTH INSURANCE CLAIMS DATA.*****SUMMARY:**

This bill requires an insurer or similar entity to disclose to an employer with more than 50 employees or a government entity sponsoring a group health care insurance policy certain information related to (1) claims incurred, including claims experience for medical, dental, and pharmacy benefits; (2) premiums paid; and (3) the number of enrollees by coverage tier (e.g., single, two-person, family) (see COMMENT).

The bill specifies that an insurer must provide the information (1) at the employer or government entity's request, (2) for the shorter of the most recent 36 months or entire coverage period, and (3) in a specified format. It also specifies that the insurer does not have to (1) provide the information more than once in a 12-month period or (2) disclose any information the law requires it to keep confidential.

The bill makes any claim information a government entity receives under its provisions (1) confidential and privileged; (2) exempt from disclosure under the Freedom of Information Act; (3) not subject to subpoena or discovery; and (4) not admissible as evidence in a private lawsuit. The bill does not prohibit the government entity from providing the claims data to a collective bargaining unit to fulfill its statutory duties.

EFFECTIVE DATE: July 1, 2009

**APPLICABILITY OF BILL**

The bill applies to an insurer, health care center (i.e., HMO), hospital or medical service corporation, or other entity delivering, issuing, renewing, amending, or continuing a group health insurance policy in Connecticut.

### **EMPLOYER AND GOVERNMENT ENTITY DEFINED**

The bill defines an “employer” as a person, firm, corporation, limited liability company, partnership, or association actively engaged in business for at least three consecutive months that, on at least 50% of its working days during the last 12 months, had more than 50 full-time employees. (Thus, it does not include a small employer.) “Government entity” is the state or any of its political subdivisions.

### **REQUIRED INFORMATION**

The bill requires the insurer’s disclosure to include:

1. all data on claims incurred under the policy, including claims for any medical, dental, and pharmacy benefits;
2. policy premiums the employer or government entity paid, by month; and
3. the number of insureds under the policy, by month and coverage tier, including single, two-person, and family.

Under the bill, the insurer must provide complete information and include all data available to it for the period requested.

### **REQUIRED FORMAT**

The insurer must provide the information (1) in a written report, (2) electronically in a secure e-mail or through a file transfer protocol site, or (3) through a secure website or website portal the employer or government entity can access.

### **BACKGROUND**

#### ***Federal Privacy Requirements***

The federal Health Insurance Portability and Accountability Act

(HIPAA) limits an insurer's release of protected health information (PHI). PHI includes medical information that contains information that could identify a person, including name, Social Security number, telephone number, medical record number, and ZIP code. Federal regulations protect this information regardless of how it is stored or transmitted.

The penalty under HIPAA for wrongful disclosure of individually identifiable health information is a \$50,000 fine, imprisonment up to one year, or both. Wrongful disclosure under false pretenses is punishable by a \$100,000 fine, imprisonment up to five years, or both. Committing wrongful disclosure with intent to sell the information is punishable by a \$250,000 fine, imprisonment up to 10 years, or both.

#### ***State Personal Information Protection Law***

The law requires anyone in possession of personal information about a person to safeguard the data, and computer files and documents containing it, from misuse by third parties (CGS § 42-471). The law does not apply to a state agency or political subdivision.

The law defines "personal information" as information capable of being associated with a particular individual through one or more identifiers, such as a Social Security number, driver's license number, state identification card number, account number, health insurance identification number, credit or debit card number, passport number, or alien registration number. It does not include publicly available information lawfully made available from federal, state, or local government records or widely distributed media.

A person who intentionally violates the law is subject to a fine of up to \$500 for each violation, not to exceed \$500,000.

#### ***State Insurance Information and Privacy Protection Act***

The law prohibits an insurer, agent, or support organization from disclosing any personal or privileged information about a person that was collected or received in connection with an insurance transaction, but specifies numerous instances when disclosure is permissible. For

example, disclosure of personal information is permissible if it is (1) made to a group policyholder for the purpose of (a) reporting claims experience or (b) conducting an audit of the insurer's or agent's operations or services, provided the information disclosed is reasonably necessary for the policyholder to conduct the audit. Disclosure is also permissible if otherwise permitted or required by law (CGS § 38a-988). An insurer or agent must provide all insurance applicants and policyholders a written notice of its information practices, including the types of, and circumstances under which, it may disclose personal information. The notice must describe only those circumstances that occur with such frequency as to indicate a general business practice (CGS § 38a-979).

The law defines "personal information" as any individually identifiable information, including a person's name, address, and medical record information, collected in connection with an insurance transaction from which judgments can be made about the person's character, habits, avocations, finances, occupation, general reputation, credit, health, or any other personal characteristics. "Privileged information" is individually identifiable information relating to an insurance claim or a civil or criminal proceeding involving the person.

"Medical record information" is information (1) related to a person's physical, mental, or behavioral health condition or medical history or treatment and (2) a medical professional or institution obtained from a pharmacy or pharmacist; the person or person's spouse, parent, or legal guardian; or providing or paying for health care. The law excludes from the definition such information if personal identifiers that either directly reveal the patient's identity, or provide a means of identifying the patient, have been removed or have been encrypted or encoded so that the patient's identity is not revealed without having to use an encryption key or code.

The law subjects a person who violates it (1) negligently to a fine of up to \$2,000 for each violation, not to exceed \$20,000, and (2) intentionally to a fine of up to \$5,000 for each violation, not to exceed

\$50,000.

## **COMMENT**

### ***Potential Conflict with Federal and State Laws***

Federal and state laws restrict the information an insurer can disclose about a person and his or her medical records and claims data (see BACKGROUND). Presumably, this bill's information disclosure requirement is effective to the extent permitted by law

State law explicitly permits an insurer to disclose personal or privileged information obtained in connection with an insurance transaction if it is (1) made to a group policyholder for the purpose of (a) reporting claims experience or (b) conducting an audit of the insurer's or agent's operations or services, provided the information disclosed is reasonably necessary for the policyholder to conduct the audit. Thus, state law already permits a group policyholder (regardless of its number of employees) to receive certain claim experience and other policy data from an insurer, but without the limitations (e.g., deadline, format) the bill specifies.

## **COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 10 Nay 8 (03/05/2009)