

HB

214

STATE OF ALASKA
1995 LEGISLATIVE SESSION

BILL NO. HB 214

Revision Date: _____
Title: Relating to Maintenance of Medical Records
in Electronic Format
Sponsor: G. Davis
Requestor: H. HESS

Dept. Affected: Health and Social Services
BRU: Administrative Services
Component: Administrative Services Support
COMPONENT SERIAL NO. 320
See also (SN#): _____

Expenditures/Revenues:

(Thousands of Dollars)

OPERATING	FY96	FY97	FY98	FY99	FY00	FY01
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES						
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CHANGES IN REVENUES ()						
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FUND SOURCE

(Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipts						
1006 GF/MHTIA						
Other (please specify)						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of any current year (FY95) cost: \$0.0

ANALYSIS: (Attach a separate page if necessary)

There is no fiscal impact on the Department of Health and Social Services.

Prepared by: Janet Clarke, Director
Division: Administrative Services

Phone: 465-3082
Date: 03/09/95

Approved by Commissioner: Karen Perdue, Commissioner
Agency: Department of Health & Social Services

Date: 3/10/95

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HOUSE COMMITTEE REPORT

(7)

Date Referred: March 1, 1995

FURTHER REFERRALS:

Date of Committee Action: 3/28/95

The HEALTH, EDUCATION AND SOCIAL SERVICES Committee considered:

HB 214

HOUSE BILL NO. 214

MEDICAL RECORDS IN ELECTRONIC FORM

"An Act relating to the maintenance by health care providers of medical records in an electronic format."

recommends it be replaced with the following committee substitute [] the same title [] a new title

[] additional referral to _____ Committee [] attached amendment(s)

ADOPTS: _____ Letter of Intent

ATTACHES NEW FISCAL NOTE(S): (Dept) APPROVES PREVIOUS: (Dept/Date) [] fiscal note(s) [] fiscal note(s)

[X] zero fiscal note(s) H+SS [] zero fiscal note(s)

Table with 5 columns: SIGNING WITH RECOMMENDATIONS, DP, DNP, NR, AM. Rows include signatures of members like Tom Bice, Caren R. Johnson, etc.

CHAIR'S SIGNATURE [Signature]



Official Business

Alaska State Legislature

HOUSE OF REPRESENTATIVES

State Capitol
Juneau, AK 99801-1182

SPONSOR STATEMENT

HOUSE BILL 214

"An Act relating to the maintenance by health care providers of medical records in an electronic format"

House Bill 214 is fairly basic legislation. HB 214 will clarify that electronically stored medical records on computer terminals are legally acceptable in lieu of records on paper.

Hospitals and Nursing Homes are moving toward "paperless offices" in an effort to promote efficiency. However, some providers are hesitant to implement the electronic retention and maintenance of medical records without a hard-copy back-up due to the lack of explicit legal authority.

The current statute relating to medical records neither prohibits or permits them to be kept electronically. A legal memorandum from Legislative Legal Services is indicative of health care providers' concerns that the ability to maintain medical records is not clearly defined in statute or regulation. House Bill 214 will lend some clarity to the medical records statute.



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State Capitol
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SECTIONAL ANALYSIS

HOUSE BILL 214

"An Act relating to the maintenance by health care providers of medical records in an electronic format."

Section 1 - Amends AS 18.20.085. Hospital records retention. Adds a new subsection making this section subject to AS 18.95.010.

Section 2 - Amends AS 18. Health & Safety. Adds new chapter and section permitting the maintenance and preservation of medical records in an electronic format without maintaining a separate copy in a handwritten or other tangible format. Also allows the Department of Health & Social Services to adopt regulations.

DIVISION OF LEGAL SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

(907) 465-3867 or 465-2450
FAX (907) 465-2029
Mail Stop 3101

150 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

December 14, 1994

SUBJECT: Electronic medical records (Work Order No. 9-LS0313)

TO: Representative Gary Davis
Attn: Darin

FROM: *TB*
Theresa Bannister
Legislative Counsel

You have asked for an opinion relating to the use of electronic medical records. Essentially you are concerned with whether private health care facilities are legally able to keep all medical records electronically without maintaining a hard copy back-up. You have provided three situations for illustration and examination.

1. Introduction of electronic information. You have raised the potential problem of introducing a hard-copy of electronic information as evidence in court. Aside from other evidentiary rules that have to be satisfied for the introduction of any piece of evidence, it appears that the fact that you are working from an electronic source would not by itself prevent the introduction of the hard copy. Alaska Rule of Evidence 1002 appears to allow the introduction. That rule requires that the "original writing, recording, or photograph" is required, except as otherwise provided by state statute or other state court rule. Although this wording does not look promising, the definition of "original" includes the following language: "If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect that data accurately, is an original." However, it is possible that an electronic reproduction of another document (e.g. a signed consent form) may not be considered to be "data" for the purposes of that definition. In that case, Alaska Rule of Evidence 1003 would seem to provide for the introduction, since it authorizes the admission of a duplicate unless a genuine question is raised as to authenticity or it would be unfair to admit the duplicate in lieu of the original. Therefore, it appears that the Alaska Rules of Evidence provide for the introduction of electronic information by hard copy. However, the rules may not be express enough for your purposes.

2. Requirement of "legibility". Does the regulatory requirement (7 AAC 12.770(b)) that medical records be maintained in a "legible" form mean only a "written" format, or does it include an electronic format as well? The term, "legible," is not defined for the regulation. Webster's Ninth New Collegiate Dictionary (1991) defines the term as "capable of being read or deciphered." Under that definition, "legible" would include electronic records since they

Representative Gary Davis

December 14, 1994

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can be "read." The apparent purpose of the regulation would be served by this interpretation. That subsection reads as follows:

(b) A facility must keep records on all patients admitted or accepted for treatment. Originals or accurate reproductions of the contents of the originals of all records, including x-rays, must be maintained in a form which is legible and readily available upon the request of the attending physician, medical staff, representative of the department, or, upon the patient's written request, to other practitioners.

Aside from making the information available for regulatory purposes, it appears that the purpose of the legibility requirement is to expedite and facilitate the treatment of patients. Therefore, if one can obtain and read the information, whether written or not, it should be adequate. This requirement, therefore, does not prohibit the use of electronic medical records without hard copies.

Some of the other terminology and requirements in 7 AAC 12.770(c) suggest that some written documents have to be held and that "legible" might be interpreted to require a hard-copy back-up: the reference to "identification sheet," in 7 AAC 12.770(c)(1) and "order sheet" in 7 AAC 12.770(c)(4); the inclusion of court orders and consent forms (which involve patient signatures; and the signature of a person who administers medication or treatment in 7 AAC 12.770(c)(6)(E)). However, the regulation allows the facility to maintain "accurate reproductions" of the records (7 AAC 12.770(b)), and this would accommodate electronic filing without hard-copy back-up.

Assuming that no hard copy is required, the electronic system must still meet the requirements of the regulation: legibility and availability. In other words, the system must be designed to have these attributes. For example, since computers are notorious for "going down," it would seem that the electronic system must do whatever is necessary to insure that the records are legible and available at all times, e.g. back-up systems, other computer access, etc.

3. Use of fingerprint-based security system. The regulatory record security requirement does not either prohibit or allow the use of a fingerprint-based security system. 7 AAC 12-770(d) merely requires a facility to maintain procedures to protect the information in medical records from loss, defacement, tampering, or access by unauthorized persons. Even assuming a hard-copy back-up is required, a fingerprint security system could be used if it met the requirements of the regulation.

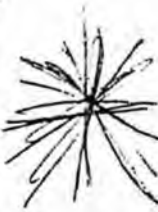
4. Authentication by computer key. You have suggested that the existence of a regulation (7 AAC 12.770(e)) authorizing authentication by computer key may indicate that clarification is necessary to confirm the ability to keep medical records by electronic means. This provision is necessary only because the regulation itself requires generally that the attending physician or dentist authenticate or sign the record. This provision tends to reinforce the ability to keep

Representative Gary Davis

December 14, 1994

Page 3

medical records electronically without hard copies, because it establishes an alternative to making a signed hard copy.



5. General question. I have not found any statute or regulation that expressly allows or prohibits the keeping of medical records electronically without a hard-copy back-up, except that AS 18.20.085(a) does specifically address the retention of x-ray film. However, the court rule appears to be compatible with this proposed approach. The regulation appears also to be compatible with this approach, although it is not a clear conclusion, and I cannot say with any finality that a health care provider may maintain only electronic records without a hard-copy back-up.

6. Need for legislation or regulation and court rule change. In light of the conflicting signals provided by the regulation, it would seem advisable to obtain express permission for keeping electronic medical records without hard-copy back-up, and for any other connected potential problem areas. You may be able to approach this through regulation, since the Department of Health and Social Services appears to have quite a bit of authority to adopt regulations in this area (see AS 18.20.060 and 18.20.085). With regard to the admission of records in court, amendments can be handled either by amendment of the court rules by the Alaska Supreme Court, which periodically amends the court rules to accommodate changing needs, or by statutory change. The Alaska Supreme Court has standing committees that advise it on changes necessary for the court rules.

This analysis has been done very quickly to enable you to have some guidance before I leave the office for a few days. Therefore, if you need further research done, or if I can help with another aspect of this matter, please advise.

TLB:glc
95-005.glc

(b) The department may by regulation require that a licensee or applicant desiring to make a specified type of alteration or addition to its facilities or to construct new facilities shall, before commencing the alteration, addition, or new construction, submit plans and specifications to the department for preliminary inspection and approval or recommendations with respect to compliance with its regulations and standards. (§ 40-6-9 ACLA 1949; am § 5 ch 112 SLA 1957; am § 1 ch 40 SLA 1986)

Cross references. — For requirement for certificate of need to alter a health care facility, see AS 18.07.

Sec. 18.20.085. Hospital records retention. (a) Unless specified otherwise by the department a hospital shall retain and preserve records that relate directly to the care and treatment of a patient for a period of seven years following the discharge of the patient. However, the records of a patient under 19 years of age shall be kept until at least two years after the patient has reached the age of 19 years or until seven years following the discharge of the patient, whichever is longer. Records consisting of X-ray film are required to be retained for five years.

(b) The department shall by regulation define the types of records and the information required to be included in the records retained and preserved under (a) of this section. The department may by regulation specify records and information to be retained for longer periods than those set out in (a) of this section.

(c) If a hospital ceases operation, it shall make immediate arrangements, as approved by the department, for the preservation of its records.

(d) In this section, "hospital" includes those facilities defined as hospitals under AS 18.20.130 and 18.20.210. (§ 1 ch 41 SLA 1970)

Collateral references. — Admissibility on issue of sanity of expert opinion based partly on medical, psychological or hospital reports. 55 ALR3d 551.

Admissibility under business entry statutes of hospital records in criminal cases. 69 ALR3d 22.

Admissibility under Uniform Business Records as Evidence Act or similar statute of medical report made by consulting phy-

sician to treating physician. 69 ALR3d 104.

Admissibility under state law of hospital record relating to intoxication or sobriety of patient. 80 ALR3d 456.

Discovery of hospital's internal records or communications as to qualifications or evaluations of individual physician. 81 ALR3d 944.

Sec. 18.20.090. Information confidential. The department may not publicly disclose information received by it in a manner identifying an individual or hospital except in a proceeding involving the question of licensing. (§ 40-6-11 ACLA 1949)

ALASKA STATE

HOSPITAL & NURSING HOME

ASSOCIATION

Representative Cynthia Toohey, Co-Chair
House HESS Committee
Room 104 State Capitol
Juneau, AK 99801-1182

March 2, 1995

Dear Cynthia:

The members of the Alaska State Hospital and Nursing Home Association support House Bill 214, "An Act relating to the maintenance by health care providers of medical records in an electronic format."

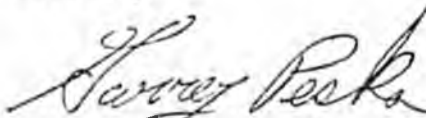
As health care providers move toward "paperless offices", it is important that Alaska law keep pace with those changes. HB 214 will clarify that electronically stored medical records are legally acceptable in lieu of records on paper.

House Bill 214 has been assigned to the House HESS committee for review. We hope your committee will give this bill an early hearing. ASHNHA's members believe this bill will be non controversial and it should have no fiscal impact on state government.

The Department of Health and Social Services has already drafted regulations that would implement this law. While not yet officially available for public comment, we understand that the regulations will cover the technical process for maintaining confidentiality of electronic medical records, security over electronic signatures, etc.

If you have any questions or comments please contact me at 364-2244 or Harlan Knudson at 586-1790.

Sincerely,



Garrey M. Peska, C.P.A.
Financial Consultant

cc: Harlan Knudson
Representative Gary Davis

SUPPORT

319 SEWARD STREET #11 • JUNEAU, AK 99801 • (907) 586-1790 • FAX (907) 463-3573



HC01, Box 6201-AB
Palmer, AK 99645
907/762-0273
Fax 907/762-0280

March 12, 1995

Representative Gary Davis
State Capital Room 420
Juneau, AK 99801

Dear Representative Davis,

I am writing in support of House Bill No. 214, an Act relating to the maintenance by health care providers of medical records in an electronic format.

Computer based patient records are important tools for supporting the clinical decision making process and improving the quality of patient care. Computer based patient records assist health care providers to promptly locate and retrieve patient information, which can increase the quality and efficiency of health care. Current paper based medical records can lead to delays in diagnosis and treatment due to time required to retrieve the medical record and route it to the treatment area. Electronic patient records can save essential time in treatment of patients during emergencies.

Computer programs can be utilized to alert health care providers to patients clinical parameters requiring immediate attention. These programs will improve the quality of care provided to patients. Computer based medical records can quickly alert providers to patient's medical diagnoses and allergies, which are essential to emergency treatment.

As proponents of health care reform frequently note, it is imperative that health care costs be reduced. The use of computers to document patient care can assist in reducing costs. It is essential that health care professionals be allowed to utilize computers to their fullest extent by maintaining and preserving patient medical information in an electronic format, without being required to also maintain a paper copy of the patient record. Currently health care providers are required to print the patient reports from the computer for maintenance in a paper based medical record. These reports must be signed by the health care professionals. This is a very expensive and time consuming process, which does not add to the quality of patient care or documentation.

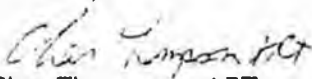
Electronic patient records will also facilitate treatment of patients at different locations within a health care system. Electronic based patient records can assist health care providers to provide integrated health care services across multiple settings and providers of care, and can support efforts to simplify the administration of health care and reduce health care costs.

AKHIMA has been working with DHSS Health Facilities Licensing and Certification Division to develop regulations for electronic medical records. It is necessary to allow patient information to be maintained in electronic format, with adequate security and backup processes to assure proper retention of the medical record data, and with provisions to safeguard the confidentiality of the patient information. We have developed draft regulations which address the essential issues relating to electronic patient information, including authentication, confidentiality, access, and retention and security.

The Alaska Health Information Management Association (AKHIMA) is Alaska's professional organization of credentialed specialists in medical records and health information management. Health information management professionals are responsible for patient health information, including patients medical record, both computer based and paper.

AKHIMA supports HB214 and urges the Legislature of the State of Alaska to enact this proposed Bill.

Sincerely,


Char Thompson, ART
President

cc: Darin Morgan



March 10, 1995

Representative Gary Davis
420 State Capital
Juneau, AK 99801-1182

Dear Representative Davis:

We truly appreciate the work that you have done to bring about HB214. We believe it is an important step in helping control costs of health care. The space we have allocated to paper files is large and growing every day. To be able to store on disk will save time, space, and effort.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Davis", is written over a horizontal line.

Tom Davis
Acting Executive Director

cc: Representative Scott Ogan
Representative Beverly Masek

TD/vlr

TOM\TOM.155



Alaska State Legislature

House of Representatives
 COMMITTEE ON HEALTH, EDUCATION
 AND SOCIAL SERVICES

DATE: MARCH 28

PLACE: Capitol Room 106

SUBJECT OF MEETING:
 HB214: Medical Records
 in ELECTRONIC
 FORM

NAME	REPRESENTING	BUSINESS/PERSONAL MAILING ADDRESS	ZIP	(H) PHONE	(W) PHONE	DO YOU WANT TO TESTIFY?	WHAT SUBJECT/ WHICH BILL?
✓ Snowflake	ASHNHA	P.O. Box 240185, Anchorage AK	99524	564-2244	586-1780	<input checked="" type="radio"/> Y <input type="radio"/> N	
✓ Elmer Lindstrom	DHSS				465-3030	<input checked="" type="radio"/> Y <input type="radio"/> N	
						<input type="radio"/> Y <input type="radio"/> N	1
✓ Chris Thompson	-----	Tolo				<input type="radio"/> Y <input type="radio"/> N	# 214
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