

# Protecting personal health information –

## *November 2016*

### **Personal health information received by the OIC**

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The Office of the Insurance Commissioner often receives personal health and medical information from individuals in the course of conducting its day to day operations – from receiving consumer complaints, to licensing individual producers, to processing IRO (independent review organizations) reports. Recently, the OIC has been given the responsibility of overseeing Pharmacy Benefit Managers, which will also likely bring in personal medical information to the agency.

### **Is personal health information protected from disclosure?**

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Currently, the OIC does not have statutory authority to withhold personal health information from public disclosure. Under the Public Records Act, Chapter 42.56, RCW, agency records are subject to disclosure unless an exemption is provided by statute. A general “right to privacy” by itself does not protect records from disclosure. The OIC is not a covered entity under HIPAA, and is also not subject to most of the provisions of RCW 70.02 that protect medical records. Therefore, the OIC is not obligated to protect medical information in the same way as a medical provider would be, nor can the OIC rely on those statutes to withhold personal health and medical information from public disclosure.

### **How people are impacted**

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Public Records staff receives more public disclosure requests for consumer complaints than any other type of records. With the ACA and hot issues like surprise billing, many of these requested complaints are specifically related to health care and include personal health and medical information. When a consumer is trying to get a dispute with an insurance company resolved, they are often not contemplating the possibility that the health information they share with the OIC may be released to the public. For those that do not consider this in advance, there are known instances (and likely many unknown) when a consumer chose *not to file* a complaint against an insurer because they could not be assured that the health information would not be disclosed in response to a public records request.

### **OIC’s solution**

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Commissioner Mike Kreidler is proposing to add a provision to the Insurance Code, RCW Title 48, that makes all nonpublic personal health information held by the OIC confidential and not subject to public disclosure. This addition to Title 48 would be an “other statute” recognized within the Public Records Act that allows the OIC to withhold the health information from the public. The legislation is consistent with the OIC’s mission to protect consumers and regulate the insurance industry, doing so in a way that does not compromise the privacy rights of individuals.