

HEALTH CARE PATIENT PRIVACY AMENDMENTS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Francis D. Gibson

Senate Sponsor: Brian E. Shiozawa

LONG TITLE

General Description:

This bill amends provisions related to the use of body-worn cameras by law enforcement in health care settings.

Highlighted Provisions:

This bill:

- ▶ amends the Government Records Access and Management Act to classify an audio or video recording created by a body-worn camera in a health care setting as a protected record under the Government Records Access and Management Act; and
- ▶ amends Title 77, Chapter 7a, Law Enforcement Use of Body-Worn Cameras, to:
 - require certain notice to a health care provider if a body-worn camera is activated in a health care setting or in certain human service programs; and
 - prohibits the activation of a body-worn camera in a health care setting or certain human service programs unless the body-worn camera is activated for a law enforcement encounter.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63G-2-305, as last amended by Laws of Utah 2015, Chapters 147, 283, and 411

77-7a-102, as enacted by Laws of Utah 2016, Chapter 410

30 77-7a-104, as enacted by Laws of Utah 2016, Chapter 410

31 77-7a-105, as enacted by Laws of Utah 2016, Chapter 410

33 *Be it enacted by the Legislature of the state of Utah:*

34 Section 1. Section 63G-2-305 is amended to read:

35 **63G-2-305. Protected records.**

36 The following records are protected if properly classified by a governmental entity:

37 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
38 has provided the governmental entity with the information specified in Section 63G-2-309;

39 (2) commercial information or nonindividual financial information obtained from a
40 person if:

41 (a) disclosure of the information could reasonably be expected to result in unfair
42 competitive injury to the person submitting the information or would impair the ability of the
43 governmental entity to obtain necessary information in the future;

44 (b) the person submitting the information has a greater interest in prohibiting access
45 than the public in obtaining access; and

46 (c) the person submitting the information has provided the governmental entity with
47 the information specified in Section 63G-2-309;

48 (3) commercial or financial information acquired or prepared by a governmental entity
49 to the extent that disclosure would lead to financial speculations in currencies, securities, or
50 commodities that will interfere with a planned transaction by the governmental entity or cause
51 substantial financial injury to the governmental entity or state economy;

52 (4) records, the disclosure of which could cause commercial injury to, or confer a
53 competitive advantage upon a potential or actual competitor of, a commercial project entity as
54 defined in Subsection 11-13-103(4);

55 (5) test questions and answers to be used in future license, certification, registration,
56 employment, or academic examinations;

57 (6) records, the disclosure of which would impair governmental procurement

proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, a bid, proposal, application, or other information submitted to or by a governmental entity in response to:

(a) an invitation for bids;

(b) a request for proposals;

(c) a request for quotes;

(d) a grant; or

(e) other similar document;

(7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:

(a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or

(b) (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and

(ii) at least two years have passed after the day on which the request for information is issued;

(8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:

(a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;

(b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;

(d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or

(e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;

(9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:

(a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or

(b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;

(10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:

(a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;

(b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;

(c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;

(d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of

114 government if disclosure would compromise the source; or
115 (e) reasonably could be expected to disclose investigative or audit techniques,
116 procedures, policies, or orders not generally known outside of government if disclosure would
117 interfere with enforcement or audit efforts;
118 (11) records the disclosure of which would jeopardize the life or safety of an
119 individual;
120 (12) records the disclosure of which would jeopardize the security of governmental
121 property, governmental programs, or governmental recordkeeping systems from damage, theft,
122 or other appropriation or use contrary to law or public policy;
123 (13) records that, if disclosed, would jeopardize the security or safety of a correctional
124 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
125 with the control and supervision of an offender's incarceration, treatment, probation, or parole;
126 (14) records that, if disclosed, would reveal recommendations made to the Board of
127 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
128 Board of Pardons and Parole, or the Department of Human Services that are based on the
129 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
130 jurisdiction;
131 (15) records and audit workpapers that identify audit, collection, and operational
132 procedures and methods used by the State Tax Commission, if disclosure would interfere with
133 audits or collections;
134 (16) records of a governmental audit agency relating to an ongoing or planned audit
135 until the final audit is released;
136 (17) records that are subject to the attorney client privilege;
137 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer,
138 employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial,
139 quasi-judicial, or administrative proceeding;
140 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
141 from a member of the Legislature; and

142 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
143 legislative action or policy may not be classified as protected under this section; and
144 (b) (i) an internal communication that is part of the deliberative process in connection
145 with the preparation of legislation between:
146 (A) members of a legislative body;
147 (B) a member of a legislative body and a member of the legislative body's staff; or
148 (C) members of a legislative body's staff; and
149 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
150 legislative action or policy may not be classified as protected under this section;
151 (20) (a) records in the custody or control of the Office of Legislative Research and
152 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
153 legislation or contemplated course of action before the legislator has elected to support the
154 legislation or course of action, or made the legislation or course of action public; and
155 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
156 Office of Legislative Research and General Counsel is a public document unless a legislator
157 asks that the records requesting the legislation be maintained as protected records until such
158 time as the legislator elects to make the legislation or course of action public;
159 (21) research requests from legislators to the Office of Legislative Research and
160 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared
161 in response to these requests;
162 (22) drafts, unless otherwise classified as public;
163 (23) records concerning a governmental entity's strategy about:
164 (a) collective bargaining; or
165 (b) imminent or pending litigation;
166 (24) records of investigations of loss occurrences and analyses of loss occurrences that
167 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
168 Uninsured Employers' Fund, or similar divisions in other governmental entities;
169 (25) records, other than personnel evaluations, that contain a personal recommendation

concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;

(26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;

(27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;

(28) records of an institution within the state system of higher education defined in Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

(29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;

(30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;

(31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;

(32) transcripts, minutes, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;

(33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from

198 disclosure;

199 (34) memoranda prepared by staff and used in the decision-making process by an
200 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
201 other body charged by law with performing a quasi-judicial function;

202 (35) records that would reveal negotiations regarding assistance or incentives offered
203 by or requested from a governmental entity for the purpose of encouraging a person to expand
204 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
205 person or place the governmental entity at a competitive disadvantage, but this section may not
206 be used to restrict access to a record evidencing a final contract;

207 (36) materials to which access must be limited for purposes of securing or maintaining
208 the governmental entity's proprietary protection of intellectual property rights including patents,
209 copyrights, and trade secrets;

210 (37) the name of a donor or a prospective donor to a governmental entity, including an
211 institution within the state system of higher education defined in Section 53B-1-102, and other
212 information concerning the donation that could reasonably be expected to reveal the identity of
213 the donor, provided that:

214 (a) the donor requests anonymity in writing;

215 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
216 classified protected by the governmental entity under this Subsection (37); and

217 (c) except for an institution within the state system of higher education defined in
218 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged
219 in educational, charitable, or artistic endeavors, and has no regulatory or legislative authority
220 over the donor, a member of the donor's immediate family, or any entity owned or controlled
221 by the donor or the donor's immediate family;

222 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
223 73-18-13;

224 (39) a notification of workers' compensation insurance coverage described in Section
225 34A-2-205;

(40) (a) the following records of an institution within the state system of higher education defined in Section 53B-1-102, which have been developed, discovered, disclosed to, or received by or on behalf of faculty, staff, employees, or students of the institution:

(i) unpublished lecture notes;

(ii) unpublished notes, data, and information:

(A) relating to research; and

(B) of:

(I) the institution within the state system of higher education defined in Section 53B-1-102; or

(II) a sponsor of sponsored research;

(iii) unpublished manuscripts;

(iv) creative works in process;

(v) scholarly correspondence; and

(vi) confidential information contained in research proposals;

(b) Subsection (40)(a) may not be construed to prohibit disclosure of public information required pursuant to Subsection 53B-16-302(2)(a) or (b); and

(c) Subsection (40)(a) may not be construed to affect the ownership of a record;

(41) (a) records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit prior to the date that audit is completed and made public; and

(b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the Legislative Auditor General is a public document unless the legislator asks that the records in the custody or control of the Office of Legislative Auditor General that would reveal the name of a particular legislator who requests a legislative audit be maintained as protected records until the audit is completed and made public;

(42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:

(a) a production facility; or

254 (b) a magazine;
255 (43) information:
256 (a) contained in the statewide database of the Division of Aging and Adult Services
257 created by Section 62A-3-311.1; or
258 (b) received or maintained in relation to the Identity Theft Reporting Information
259 System (IRIS) established under Section 67-5-22;
260 (44) information contained in the Management Information System and Licensing
261 Information System described in Title 62A, Chapter 4a, Child and Family Services;
262 (45) information regarding National Guard operations or activities in support of the
263 National Guard's federal mission;
264 (46) records provided by any pawn or secondhand business to a law enforcement
265 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
266 Secondhand Merchandise Transaction Information Act;
267 (47) information regarding food security, risk, and vulnerability assessments performed
268 by the Department of Agriculture and Food;
269 (48) except to the extent that the record is exempt from this chapter pursuant to Section
270 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or
271 prepared or maintained by the Division of Emergency Management, and the disclosure of
272 which would jeopardize:
273 (a) the safety of the general public; or
274 (b) the security of:
275 (i) governmental property;
276 (ii) governmental programs; or
277 (iii) the property of a private person who provides the Division of Emergency
278 Management information;
279 (49) records of the Department of Agriculture and Food that provides for the
280 identification, tracing, or control of livestock diseases, including any program established under
281 Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act or Title 4, Chapter 31, Control

of Animal Disease;

(50) as provided in Section 26-39-501:

(a) information or records held by the Department of Health related to a complaint regarding a child care program or residential child care which the department is unable to substantiate; and

(b) information or records related to a complaint received by the Department of Health from an anonymous complainant regarding a child care program or residential child care;

(51) unless otherwise classified as public under Section 63G-2-301 and except as provided under Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone number, if:

(a) the individual is required to provide the information in order to comply with a law, ordinance, rule, or order of a government entity; and

(b) the subject of the record has a reasonable expectation that this information will be kept confidential due to:

(i) the nature of the law, ordinance, rule, or order; and

(ii) the individual complying with the law, ordinance, rule, or order;

(52) the name, home address, work addresses, and telephone numbers of an individual that is engaged in, or that provides goods or services for, medical or scientific research that is:

(a) conducted within the state system of higher education, as defined in Section 53B-1-102; and

(b) conducted using animals;

(53) an initial proposal under Title 63N, Chapter 13, Part 2, Government Procurement Private Proposal Program, to the extent not made public by rules made under that chapter;

(54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation Commission concerning an individual commissioner's vote on whether or not to recommend that the voters retain a judge;

(55) information collected and a report prepared by the Judicial Performance Evaluation Commission concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter

12, Judicial Performance Evaluation Commission Act, requires disclosure of, or makes public, the information or report;

(56) records contained in the Management Information System created in Section 62A-4a-1003;

(57) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63J-4-603;

(58) information requested by and provided to the 911 Division under Section 63H-7a-302;

(59) in accordance with Section 73-10-33:

(a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or

(b) an outline of an emergency response plan in possession of the state or a county or municipality;

(60) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:

(a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;

(b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;

(c) before the time that an investigation or audit is completed and the final

investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;

(d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or

(e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;

(61) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health, to discover Medicaid fraud, waste, or abuse;

(62) information provided to the Department of Health or the Division of Occupational and Professional Licensing under Subsection 58-68-304(3) or (4);

(63) a record described in Section 63G-12-210;

(64) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003; [and]

(65) any record in the custody of the Utah Office for Victims of Crime relating to a victim, including:

(a) a victim's application or request for benefits;

(b) a victim's receipt or denial of benefits; and

(c) any administrative notes or records made or created for the purpose of, or used to, evaluate or communicate a victim's eligibility for or denial of benefits from the Crime Victim Reparations Fund[-]; and

(66) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Subsection 62A-2-101(19)(a)(vi), except for recordings that:

(a) depict the commission of an alleged crime;

(b) record any encounter between a law enforcement officer and a person that results in

death or bodily injury, or includes an instance when an officer fires a weapon;

(c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;

(d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(d); or

(e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording.

Section 2. Section **77-7a-102** is amended to read:

77-7a-102. Body-worn cameras -- Written policies and procedures.

(1) Any law enforcement agency that uses body-worn cameras shall have a written policy governing the use of body-worn cameras that is consistent with the provisions of this chapter.

(2) (a) Any written policy regarding the use of body-worn cameras by a law enforcement agency shall, at a minimum:

(i) comply with and include the requirements in this chapter; and

(ii) address the security, storage, and maintenance of data collected from body-worn cameras.

(b) ~~[This]~~ Except as provided in Subsection 77-7a-104(11), this chapter does not prohibit a law enforcement agency from adopting body-worn camera policies that are more expansive than the minimum guidelines provided in this chapter.

(3) This chapter does not require an officer to jeopardize the safety of the public, other law enforcement officers, or himself or herself in order to activate or deactivate a body-worn camera.

Section 3. Section **77-7a-104** is amended to read:

77-7a-104. Activation and use of body-worn cameras.

(1) An officer using a body-worn camera shall verify that the equipment is properly functioning as is reasonably within the officer's ability.

(2) An officer shall report any malfunctioning equipment to the officer's supervisor if:

(a) the body-worn camera issued to the officer is not functioning properly upon initial inspection; or

(b) an officer determines that the officer's body-worn camera is not functioning properly at any time while the officer is on duty.

(3) An officer shall wear the body-worn camera so that it is clearly visible to the person being recorded.

(4) An officer shall activate the body-worn camera prior to any law enforcement encounter, or as soon as reasonably possible.

(5) An officer shall record in an uninterrupted manner until after the conclusion of a law enforcement encounter, except as an interruption of a recording is allowed under this section.

(6) When going on duty and off duty, an officer who is issued a body-worn camera shall record the officer's name, identification number, and the current time and date, unless the information is already available due to the functionality of the body-worn camera.

(7) If a body-worn camera was present during a law enforcement encounter, the officer shall document the presence of the body-worn camera in any report or other official record of a contact.

(8) When a body-worn camera has been activated, the officer may not deactivate the body-worn camera until the officer's direct participation in the law enforcement encounter is complete, except as provided in Subsection (9).

(9) An officer may deactivate a body-worn camera:

(a) to consult with a supervisor or another officer;

(b) during a significant period of inactivity; and

(c) during a conversation with a sensitive victim of crime, a witness of a crime, or an individual who wishes to report or discuss criminal activity if:

(i) the individual who is the subject of the recording requests that the officer deactivate the officer's body-worn camera; and

(ii) the officer believes that the value of the information outweighs the value of the

potential recording and records the request by the individual to deactivate the body-worn camera.

(10) If an officer deactivates a body-worn camera, the officer shall document the reason for deactivating a body-worn camera in a written report.

(11) (a) For purposes of this Subsection (11):

(i) "Health care facility" means the same as that term is defined in Section [78B-3-403](#).

(ii) "Health care provider" means the same as that term is defined in Section [78B-3-403](#).

(iii) "Hospital" means the same as that term is defined in Section [78B-3-403](#).

(iv) "Human service program" means the same as that term is defined in Subsection [62A-2-101](#)(19)(a)(vi).

(b) An officer may not activate a body-worn camera in a hospital, health care facility, human service program, or the clinic of a health care provider, except during a law enforcement encounter, and with notice under Section [77-7a-105](#).

Section 4. Section **77-7a-105** is amended to read:

77-7a-105. Notice and privacy.

(1) ~~When an~~ An officer with a body-worn camera ~~[enters a private residence, the officer]~~ shall give notice, when reasonable under the circumstances~~[-]~~:

(a) to:

(i) the occupants of ~~[the]~~ a private residence ~~[that]~~ in which the officer enters and in which a body-worn camera is in use; or

(ii) a health care provider present at a hospital, a health care facility, human service program, or a health care provider's clinic in which the officer enters and in which a body-worn camera is in use; and

(b) either by:

~~[(a)]~~ (i) wearing a body-worn camera in a clearly visible manner; or

~~[(b)]~~ (ii) giving an audible notice that the officer is using a body-worn camera.

(2) An agency shall make the agency's policies regarding the use of body-worn cameras

450 available to the public, and shall place the policies on the agency's public website when
451 possible.