

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 4077

To establish a code of fair information practices for health information,  
to amend section 552a of title 5, United States Code, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 17, 1994

Mr. CONDIT (for himself, Mr. CONYERS, and Ms. VELÁZQUEZ) introduced the following bill; which was referred jointly to the Committees on Government Operations, the Judiciary, and Energy and Commerce

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## A BILL

To establish a code of fair information practices for health information, to amend section 552a of title 5, United States Code, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Fair Health Information Practices Act of 1994”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.

TITLE I—FAIR INFORMATION PRACTICES FOR PROTECTED  
HEALTH INFORMATION

Subtitle A—Treatment of Protected Health Information

- Sec. 101. Duties and authorities of health use trustees.
- Sec. 102. Duties and authorities of public health trustees.
- Sec. 103. Duties and authorities of special purpose trustees.
- Sec. 104. Duties and authorities of affiliated persons.

Subtitle B—Duties and Authorities of Health Information Trustees

PART 1—DUTIES OF HEALTH INFORMATION TRUSTEES

- Sec. 111. Inspection of protected health information.
- Sec. 112. Amendment of protected health information.
- Sec. 113. Notice of information practices.
- Sec. 114. Accounting for disclosures.
- Sec. 115. Security.

PART 2—USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- Sec. 121. General limitations on use and disclosure.
- Sec. 122. Authorizations for disclosure of protected health information.
- Sec. 123. Treatment, payment, and oversight.
- Sec. 124. Next of kin and directory information.
- Sec. 125. Public health.
- Sec. 126. Emergency circumstances.
- Sec. 127. Judicial, administrative, and other legal purposes.
- Sec. 128. Health research.
- Sec. 129. Law enforcement.
- Sec. 130. Subpoenas, warrants, and search warrants.

Subtitle C—Access Procedures and Challenge Rights

- Sec. 141. Access procedures for law enforcement subpoenas, warrants, and search warrants.
- Sec. 142. Challenge procedures for law enforcement subpoenas.
- Sec. 143. Access and challenge procedures for other subpoenas.
- Sec. 144. Construction of subtitle; suspension of statute of limitations.
- Sec. 145. Responsibilities of Secretary.

Subtitle D—Miscellaneous Provisions

- Sec. 151. Debit and credit card transactions.
- Sec. 152. Access to protected health information outside of the United States.
- Sec. 153. Standards for electronic documents and communications.
- Sec. 154. Powers of attorney.
- Sec. 155. Rights of incompetents.
- Sec. 156. Rights of minors.

Subtitle E—Enforcement

- Sec. 161. Civil actions.
- Sec. 162. Civil money penalties.
- Sec. 163. Alternative dispute resolution.
- Sec. 164. Amendments to criminal law.

## TITLE II—AMENDMENTS TO TITLE 5, UNITED STATES CODE

Sec. 201. Amendments to title 5, United States Code.

TITLE III—REGULATIONS; EFFECTIVE DATES; APPLICABILITY;  
AND RELATIONSHIP TO OTHER LAWS

Sec. 301. Regulations.

Sec. 302. Effective dates.

Sec. 303. Applicability.

Sec. 304. Relationship to other laws.

1 **SEC. 2. FINDINGS AND PURPOSES.**

2 (a) FINDINGS.—The Congress finds as follows:

3 (1) The right to privacy is a personal and fun-  
4 damental right protected by the Constitution of the  
5 United States.

6 (2) The improper use or disclosure of personally  
7 identifiable health information about an individual  
8 may cause significant harm to the interests of the  
9 individual in privacy and health care, and may un-  
10 fairly affect the ability of the individual to obtain  
11 employment, education, insurance, credit, and other  
12 necessities.

13 (3) Current legal protections for health infor-  
14 mation vary from State to State and are inadequate  
15 to meet the need for fair information practices  
16 standards.

17 (4) The movement of individuals and health in-  
18 formation across State lines, access to and exchange  
19 of health information from automated data banks  
20 and networks, and the emergence of multistate

1 health care providers and payors create a compelling  
2 need for uniform Federal law, rules, and procedures  
3 governing the use, maintenance, and disclosure of  
4 health information.

5 (5) Uniform rules governing the use, mainte-  
6 nance, and disclosure of health information are an  
7 essential part of health care reform, are necessary to  
8 support the computerization of health information,  
9 and can reduce the cost of providing health services  
10 by making the necessary transfer of health informa-  
11 tion more efficient.

12 (6) An individual needs access to health infor-  
13 mation about the individual as a matter of fairness,  
14 to enable the individual to make informed decisions  
15 about health care, and to correct inaccurate or in-  
16 complete information.

17 (b) PURPOSES.—The purposes of this Act are as  
18 follows:

19 (1) To define the rights of an individual with  
20 respect to health information about the individual  
21 that is created or maintained as part of the health  
22 treatment and payment process.

23 (2) To define the rights and responsibilities of  
24 a person who creates or maintains individually iden-

1        tifiable health information that originates or is used  
2        in the health treatment or payment process.

3            (3) To establish effective mechanisms to enforce  
4        the rights and responsibilities defined in this Act.

5        **SEC. 3. DEFINITIONS.**

6            (a) DEFINITIONS RELATING TO PROTECTED  
7        HEALTH INFORMATION.—For purposes of this Act:

8            (1) DISCLOSE.—The term “disclose”, when  
9        used with respect to protected health information,  
10       means to provide access to the information, but only  
11       if such access is provided by a health information  
12       trustee to a person other than—

13            (A) the trustee or an officer or employee of  
14       the trustee;

15            (B) an affiliated person of the trustee; or

16            (C) the individual who is the subject of the  
17       information.

18            (2) DISCLOSURE.—The term “disclosure”  
19       means the act or an instance of disclosing.

20            (3) PROTECTED HEALTH INFORMATION.—The  
21       term “protected health information” means any in-  
22       formation, whether oral or recorded in any form or  
23       medium, that—

1 (A) is created or received by a health use  
2 trustee or a public health trustee in a State;  
3 and

4 (B) relates to the past, present, or future  
5 physical or mental health of an individual, the  
6 provision of health care to an individual, or  
7 payment for the provision of health care to an  
8 individual and—

9 (i) identifies the individual; or

10 (ii) with respect to which there is a  
11 reasonable basis to believe that the infor-  
12 mation can be used readily to identify the  
13 individual.

14 (b) DEFINITIONS RELATING TO HEALTH INFORMA-  
15 TION TRUSTEES.—For purposes of this Act:

16 (1) HEALTH BENEFIT PLAN.—The term  
17 “health benefit plan” means any public or private  
18 entity or program that provides payments for health  
19 care—

20 (A) including—

21 (i) a group health plan (as defined in  
22 section 607 of the Employee Retirement  
23 Income Security Act of 1974) or a multiple  
24 employer welfare arrangement (as defined

1 in section 3(40) of such Act) providing  
2 health benefits; and

3 (ii) any other health insurance ar-  
4 rangement, including any arrangement  
5 consisting of a hospital or medical expense  
6 incurred policy or certificate, hospital or  
7 medical service plan contract, or health  
8 maintenance organization subscriber con-  
9 tract;

10 (B) but not including—

11 (i) an individual making payment on  
12 the individual's own behalf (or on behalf of  
13 a relative or other individual) for health  
14 care or for deductibles, coinsurance,  
15 copayments, items, or services not covered  
16 under a health insurance arrangement;

17 (ii) a plan sponsor (as defined in sec-  
18 tion 3(16) of the Employee Retirement In-  
19 come Security Act of 1974);

20 (iii) an employer of an employee cov-  
21 ered under a multiple employer welfare  
22 arrangement;

23 (iv) an employee organization that  
24 sponsors a multiple employer welfare  
25 arrangement; or

1                   (v) an organization, association, com-  
2                   mittee, joint board of trustees, or similar  
3                   group of representatives of 2 or more em-  
4                   ployers described in clause (iii) or 2 or  
5                   more employee organizations described in  
6                   clause (iv).

7                   (2) HEALTH CARE PROVIDER.—The term  
8                   “health care provider” means a person who is li-  
9                   censed, certified, registered, or otherwise authorized  
10                  by law to provide an item or service that constitutes  
11                  health care in the ordinary course of business or  
12                  practice of a profession.

13                  (3) HEALTH INFORMATION TRUSTEE.—The  
14                  term “health information trustee” means a person  
15                  who—

16                         (A) creates or receives protected health in-  
17                         formation that affects interstate commerce; and

18                         (B) is a health use trustee, public health  
19                         trustee, or special purpose trustee.

20                  (4) HEALTH OVERSIGHT AGENCY.—The term  
21                  “health oversight agency” means a person—

22                         (A) who performs or oversees the perform-  
23                         ance of an assessment, evaluation, determina-  
24                         tion, or investigation relating to the licensing,



1 accreditation, or certification of health care  
2 providers;

3 (B) who—

4 (i) enters into agreements with health  
5 benefit plans that are offered to individuals  
6 residing in a specific geographic region in  
7 order to facilitate the enrollment of such  
8 individuals in such plans; and

9 (ii) is a public agency, acting on be-  
10 half of a public agency, acting pursuant to  
11 a requirement of a public agency, or carry-  
12 ing out activities under a State or Federal  
13 statute regulating the agreements; or

14 (C) who—

15 (i) performs or oversees the perform-  
16 ance of an assessment, evaluation, deter-  
17 mination, or investigation relating to the  
18 effectiveness of, compliance with, or appli-  
19 cability of, legal, fiscal, medical, or sci-  
20 entific standards or aspects of performance  
21 related to the delivery of, or payment for,  
22 health care; and

23 (ii) is a public agency, acting on be-  
24 half of a public agency, acting pursuant to  
25 a requirement of a public agency, or carry-

1           ing out activities under a State or Federal  
2           statute regulating the assessment, evalua-  
3           tion, determination, or investigation.

4           (5) HEALTH RESEARCHER.—The term “health  
5           researcher” means a person who conducts a health  
6           research project.

7           (6) HEALTH USE TRUSTEE.—The term “health  
8           use trustee” means a person who, with respect to  
9           protected health information, receives, creates, uses,  
10          maintains, or transmits such information while act-  
11          ing in whole or in part in the capacity of—

12                   (A) a health care provider, health benefit  
13                   plan, or health oversight agency; or

14                   (B) an officer or employee of a person de-  
15                   scribed in subparagraph (A).

16          (7) PUBLIC HEALTH AUTHORITY.—The term  
17          “public health authority” means an authority of the  
18          United States, a State, or a political subdivision of  
19          a State that—

20                   (A) is responsible for public health mat-  
21                   ters; and

22                   (B) is conducting—

23                           (i) a disease or injury reporting pro-  
24                           gram;

25                           (ii) public health surveillance; or

1 (iii) a public health investigation.

2 (8) PUBLIC HEALTH TRUSTEE.—The term  
3 “public health trustee” means a person who, with  
4 respect to protected health information, receives,  
5 creates, uses, maintains, or transmits such informa-  
6 tion while acting in whole or in part in the capacity  
7 of—

8 (A) a health researcher;

9 (B) a public health authority; or

10 (C) an officer or employee of a person de-  
11 scribed in subparagraph (A) or (B).

12 (9) SPECIAL PURPOSE TRUSTEE.—The term  
13 “special purpose trustee” means a person who, with  
14 respect to protected health information—

15 (A) receives such information under sec-  
16 tion 126 (relating to emergency circumstances),  
17 127 (relating to judicial, administrative, and  
18 other legal purposes), 129 (relating to law en-  
19 forcement), or 130 (relating to subpoenas, war-  
20 rants, and search warrants); or

21 (B) is acting in whole or in part in the ca-  
22 pacity of an officer or employee of a person de-  
23 scribed in subparagraph (A) with respect to  
24 such information.

25 (c) OTHER DEFINITIONS.—For purposes of this Act:

1           (1) AFFILIATED PERSON.—The term “affiliated  
2 person” means a person who—

3                   (A) is not a health information trustee;

4                   (B) is a contractor, subcontractor, affiliate,  
5 or subsidiary of a person who is a health infor-  
6 mation trustee; and

7                   (C) pursuant to an agreement or other re-  
8 lationship with such trustee, receives, creates,  
9 uses, maintains, or transmits protected health  
10 information in order to conduct a legitimate  
11 business activity of the trustee.

12           (2) HEALTH CARE.—The term “health care”—

13                   (A) means—

14                           (i) any preventive, diagnostic, thera-  
15 peutic, rehabilitative, maintenance, or pal-  
16 liative care, counseling, service, or proce-  
17 dure—

18                                   (I) with respect to the physical or  
19 mental condition of an individual; or

20                                   (II) affecting the structure or  
21 function of the human body or any  
22 part of the human body, including  
23 banking of blood, sperm, organs, or  
24 any other tissue; or

1 (ii) any sale or dispensing of a drug,  
2 device, equipment, or other item to an indi-  
3 vidual, or for the use of an individual, pur-  
4 suant to a prescription; but

5 (B) does not include any item or service  
6 that is not furnished for the purpose of main-  
7 taining or improving the health of an individual.

8 (3) HEALTH RESEARCH PROJECT.—The term  
9 “health research project” means a biomedical, epide-  
10 miological, or health services research project, or a  
11 health statistics project, that has been approved  
12 by—

13 (A) an institutional review board for the  
14 organization sponsoring the project;

15 (B) an institutional review board for each  
16 health information trustee that maintains pro-  
17 tected health information intended to be used in  
18 the project; or

19 (C) an institutional review board estab-  
20 lished or designated by the Secretary.

21 (4) INSTITUTIONAL REVIEW BOARD.—The term  
22 “institutional review board” means—

23 (A) a board established in accordance with  
24 regulations of the Secretary under section  
25 491(a) of the Public Health Service Act;

1 (B) a similar board established by the Sec-  
2 retary for the protection of human subjects in  
3 research conducted by the Secretary;

4 (C) a similar board established under regu-  
5 lations of a Federal Government authority other  
6 than the Secretary; or

7 (D) a similar board which meets such re-  
8 quirements as the Secretary may specify.

9 (5) LAW ENFORCEMENT INQUIRY.—The term  
10 “law enforcement inquiry” means a lawful investiga-  
11 tion or official proceeding inquiring into a specific  
12 violation of, or failure to comply with, any criminal  
13 or civil statute or any regulation, rule, or order is-  
14 sued pursuant to such a statute.

15 (6) PERSON.—The term “person” includes an  
16 authority of the United States, a State, or a political  
17 subdivision of a State.

18 (7) SECRETARY.—The term “Secretary” means  
19 the Secretary of Health and Human Services.

20 (8) STATE.—The term “State” includes the  
21 District of Columbia, Puerto Rico, the Virgin Is-  
22 lands, Guam, American Samoa, and the Northern  
23 Mariana Islands.

1 **TITLE I—FAIR INFORMATION**  
2 **PRACTICES FOR PROTECTED**  
3 **HEALTH INFORMATION**

4 **Subtitle A—Treatment of Protected**  
5 **Health Information**

6 **SEC. 101. DUTIES AND AUTHORITIES OF HEALTH USE**  
7 **TRUSTEES.**

8 A health use trustee—

9 (1) shall comply with sections 111 (relating to  
10 inspection), 112 (relating to amendment), 113 (re-  
11 lating to notice of information practices), 114 (relat-  
12 ing to accounting for disclosures), and 115 (relating  
13 to security);

14 (2) may use protected health information if  
15 such use is in accordance with section 121; and

16 (3) may disclose such information if such dis-  
17 closure is in accordance with section 121 and 1 or  
18 more of the following sections:

19 (A) Section 122 (relating to authoriza-  
20 tions).

21 (B) Section 123 (relating to treatment,  
22 payment, and oversight).

23 (C) Section 124 (relating to next of kin  
24 and directory information).

25 (D) Section 125 (relating to public health).

1 (E) Section 126 (relating to emergency cir-  
2 cumstances).

3 (F) Section 127 (relating to judicial, ad-  
4 ministrative, and other legal purposes).

5 (G) Section 128 (relating to health re-  
6 search).

7 (H) Section 129 (relating to law enforce-  
8 ment).

9 (I) Section 130 (relating to subpoenas,  
10 warrants, and search warrants).

11 **SEC. 102. DUTIES AND AUTHORITIES OF PUBLIC HEALTH**  
12 **TRUSTEES.**

13 (a) IN GENERAL.—Except as provided in subsections  
14 (b) and (c), a public health trustee—

15 (1) shall comply with sections 111 (relating to  
16 inspection), 114 (relating to accounting for disclo-  
17 sures), and 115 (relating to security);

18 (2) may use protected health information if  
19 such use is in accordance with section 121; and

20 (3) may disclose such information if—

21 (A) such disclosure is essential to fulfill a  
22 public health purpose; or

23 (B) such disclosure is in accordance with  
24 section 121 and 1 or more of the following  
25 sections:



1 (i) Section 122 (relating to authoriza-  
2 tions).

3 (ii) Section 125 (relating to public  
4 health).

5 (iii) Section 126 (relating to emer-  
6 gency circumstances).

7 (iv) Section 128 (relating to health re-  
8 search).

9 (v) Section 129 (relating to law en-  
10 forcement) (except section 129(a)(2)).

11 (b) DETERMINATIONS BY PUBLIC HEALTH TRUST-  
12 EES SPECIFIC TO AN INDIVIDUAL.—A public health trust-  
13 ee who makes a decision concerning a right, benefit, or  
14 privilege of a individual using protected health information  
15 about the individual shall be considered to be a health use  
16 trustee with respect to such information and is subject to  
17 section 101 (and not this section) with respect to such  
18 information.

19 (c) OVERLAP WITH HEALTH USE TRUSTEE.—A per-  
20 son who is a public health trustee and a health use trustee  
21 with respect to the same protected health information is  
22 subject to section 101 and is not subject to this section  
23 with respect to such information.

1 **SEC. 103. DUTIES AND AUTHORITIES OF SPECIAL PURPOSE**

2 **TRUSTEES.**

3 (a) IN GENERAL.—A special purpose trustee—

4 (1) shall comply with sections 114 (relating  
5 to accounting for disclosures) and 115 (relating to  
6 security);

7 (2) may use protected health information if  
8 such use is in accordance with section 121; and

9 (3) may disclose such information if such dis-  
10 closure is in accordance with section 121 and one or  
11 more of the following sections:

12 (A) Section 122 (relating to authoriza-  
13 tions).

14 (B) Section 126 (relating to emergency cir-  
15 cumstances).

16 (C) Section 128 (relating to health re-  
17 search).

18 (D) Section 129 (relating to law enforce-  
19 ment).

20 (E) Section 130 (relating to subpoenas,  
21 warrants, and search warrants).

22 (b) OVERLAP WITH HEALTH USE AND PUBLIC  
23 HEALTH TRUSTEES.—A person who is a health use trust-  
24 ee and a special purpose trustee with respect to the same  
25 protected health information is subject to section 101 and  
26 is not subject to this section with respect to such informa-

1 tion. A person who is a public health trustee and a special  
2 purpose trustee with respect to the same protected health  
3 information is subject to section 102 and is not subject  
4 to this section with respect to such information.

5 **SEC. 104. DUTIES AND AUTHORITIES OF AFFILIATED PER-**  
6 **SONS.**

7 (a) DUTIES OF AFFILIATED PERSONS.—

8 (1) IN GENERAL.—An affiliated person is re-  
9 quired to fulfill any duty under this Act that—

10 (A) the health information trustee with  
11 whom the person has an agreement or relation-  
12 ship described in section 3(c)(1)(C) is required  
13 to fulfill; and

14 (B) the person has undertaken to fulfill  
15 pursuant to such agreement or relationship.

16 (2) CONSTRUCTION OF OTHER SUBTITLES.—

17 With respect to a duty described in paragraph (1)  
18 that an affiliated person is required to fulfill, the  
19 person shall be considered a health information  
20 trustee for purposes of this Act. The person shall be  
21 subject to subtitle E (relating to enforcement) with  
22 respect to any such duty that the person fails to ful-  
23 fill.

24 (3) EFFECT ON TRUSTEE.—An agreement or  
25 relationship described in section 3(c)(1)(C) does not

1       relieve a health information trustee of any duty or  
2       liability under this Act.

3       (b) AUTHORITIES.—

4             (1) IN GENERAL.—An affiliated person may ex-  
5       ercise any authority under this Act that the health  
6       information trustee with whom the person has an  
7       agreement or relationship described in section  
8       3(c)(1)(C) may exercise and that the person has  
9       been given pursuant to such agreement. With re-  
10      spect to any such authority, the person shall be con-  
11      sidered a health information trustee for purposes of  
12      this Act. The person shall be subject to subtitle E  
13      (relating to enforcement) with respect to any act  
14      that exceeds such authority.

15            (2) EFFECT ON TRUSTEE.—An agreement or  
16      relationship described in section 3(c)(1)(C) does not  
17      affect the authority of a health information trustee  
18      under this Act.

1 **Subtitle B—Duties and Authorities**  
2 **of Health Information Trustees**

3 **PART 1—DUTIES OF HEALTH INFORMATION**  
4 **TRUSTEES**

5 **SEC. 111. INSPECTION OF PROTECTED HEALTH INFORMA-**  
6 **TION.**

7 (a) IN GENERAL.—Except as provided in subsection  
8 (b), a health information trustee who is required by sub-  
9 title A to comply with this section—

10 (1) shall permit an individual to inspect any  
11 protected health information about the individual  
12 that the trustee maintains;

13 (2) shall permit the individual to have a copy  
14 of the information;

15 (3) shall permit a person who has been des-  
16 ignated in writing by the individual to inspect, or to  
17 have a copy of, the information on behalf of the indi-  
18 vidual or to accompany the individual during the in-  
19 spection; and

20 (4) may offer to explain or interpret informa-  
21 tion that is inspected or copied under this sub-  
22 section.

23 (b) EXCEPTIONS.—A health information trustee is  
24 not required by this section to permit inspection or copy-

1 ing of protected health information if any of the following  
2 conditions apply:

3 (1) MENTAL HEALTH TREATMENT NOTES.—

4 The information consists of psychiatric, psycho-  
5 logical, or mental health treatment notes, the trustee  
6 determines in the exercise of reasonable medical  
7 judgment that inspection or copying of the notes  
8 would cause sufficient harm to the individual who is  
9 the subject of the notes so as to outweigh the desir-  
10 ability of permitting access, and the trustee does not  
11 disclose the notes to any person not directly engaged  
12 in treating the individual, except with the authoriza-  
13 tion of the individual or under compulsion of law.

14 (2) INFORMATION ABOUT OTHERS.—The infor-  
15 mation relates to an individual other than the indi-  
16 vidual seeking to inspect or have a copy of the infor-  
17 mation and the trustee determines in the exercise of  
18 reasonable medical judgment that inspection or  
19 copying of the information would cause sufficient  
20 harm to one or both of the individuals so as to out-  
21 weigh the desirability of permitting access.

22 (3) ENDANGERMENT TO LIFE OR SAFETY.—

23 Disclosure of the information could reasonably be  
24 expected to endanger the life or physical safety of an  
25 individual.

1           (4) CONFIDENTIAL SOURCE.—The information  
2 identifies or could reasonably lead to the identifica-  
3 tion of an individual (other than a health care pro-  
4 vider) who provided information under a promise of  
5 confidentiality to a health care provider concerning  
6 the individual who is the subject of the information.

7           (5) ADMINISTRATIVE PURPOSES.—The informa-  
8 tion—

9                   (A) is used by the trustee solely for admin-  
10 istrative purposes and not in the provision of  
11 health care to the individual who is the subject  
12 of the information; and

13                   (B) is not disclosed by the trustee to any  
14 person.

15           (6) DUPLICATIVE INFORMATION.—The informa-  
16 tion duplicates information available for inspection  
17 under subsection (a).

18           (7) INFORMATION COMPILED IN ANTICIPATION  
19 OF LITIGATION.—The information is compiled prin-  
20 cipally—

21                   (A) in reasonable anticipation of a civil ac-  
22 tion or proceeding; or

23                   (B) for use in such an action or proceed-  
24 ing.

1 (c) INSPECTION AND COPYING OF SEGREGABLE POR-  
2 TION.—A health information trustee who is required by  
3 subtitle A to comply with this section shall permit inspec-  
4 tion and copying under subsection (a) of any reasonably  
5 segregable portion of a record after deletion of any portion  
6 that is exempt under subsection (b).

7 (d) CONDITIONS.—A health information trustee  
8 may—

9 (1) require a written request for the inspection  
10 and copying of protected health information under  
11 this section; and

12 (2) charge a reasonable fee (not greater than  
13 the actual cost) for—

14 (A) permitting inspection of information  
15 under this section; and

16 (B) providing a copy of protected health  
17 information under this section.

18 (e) STATEMENT OF REASONS FOR DENIAL.—If a  
19 health information trustee denies a request for inspection  
20 or copying under this section, the trustee shall provide the  
21 individual who made the request (or the individual's des-  
22 igned representative) with a written statement of the  
23 reasons for the denial.

24 (f) DEADLINE.—A health information trustee shall  
25 comply with or deny a request for inspection or copying



1 of protected health information under this section within  
2 the 30-day period beginning on the date the trustee re-  
3 ceives the request.

4 **SEC. 112. AMENDMENT OF PROTECTED HEALTH INFORMA-**  
5 **TION.**

6 (a) IN GENERAL.—A health information trustee who  
7 is required by subtitle A to comply with this section shall,  
8 within the 45-day period beginning on the date the trustee  
9 receives from an individual about whom the trustee main-  
10 tains protected health information a written request that  
11 the trustee correct or amend the information, either—

12 (1) make the correction or amendment re-  
13 quested, inform the individual of the correction or  
14 amendment that has been made, and inform any  
15 person who is identified by the individual, who is not  
16 an employee of the trustee, and to whom the uncor-  
17 rected or unamended portion of the information was  
18 previously disclosed of the correction or amendment  
19 that has been made; or

20 (2) inform the individual of—

21 (A) the reasons for the refusal of the trust-  
22 ee to make the correction or amendment;

23 (B) any procedures for further review of  
24 the refusal; and

1           (C) the individual's right to file with the  
2 trustee a concise statement setting forth the re-  
3 quested correction or amendment and the indi-  
4 vidual's reasons for disagreeing with the refusal  
5 of the trustee.

6           (b) BASES FOR REQUEST TO CORRECT OR AMEND.—  
7 An individual may request correction or amendment of  
8 protected health information about the individual under  
9 subsection (a) if the information is not timely, accurate,  
10 relevant, or complete.

11          (c) STATEMENT OF DISAGREEMENT.—After an indi-  
12 vidual has filed a statement of disagreement under sub-  
13 section (a)(2)(C), the trustee, in any subsequent disclosure  
14 of the disputed portion of the information, shall include  
15 a copy of the individual's statement and may include a  
16 concise statement of the trustee's reasons for not making  
17 the requested correction or amendment.

18          (d) CONSTRUCTION.—This section shall not be con-  
19 strued to require a health information trustee to conduct  
20 a formal, informal, or other hearing or proceeding con-  
21 cerning a request for a correction or amendment to pro-  
22 tected health information the trustee maintains.

23          (e) CORRECTION.—For purposes of subsection (a), a  
24 correction is deemed to have been made to protected  
25 health information where information that is not timely,

1 accurate, relevant, or complete is clearly marked as incor-  
2 rect or where supplementary correct information is made  
3 part of the information.

4 **SEC. 113. NOTICE OF INFORMATION PRACTICES.**

5 (a) PREPARATION OF WRITTEN NOTICE.—A health  
6 information trustee who is required by subtitle A of this  
7 title to comply with this section shall prepare a written  
8 notice of information practices describing the following:

9 (1) RIGHTS OF INDIVIDUALS.—The rights  
10 under this title of an individual who is the subject  
11 of protected health information, including the right  
12 to inspect and copy such information and the right  
13 to seek amendments to such information, and the  
14 procedures for authorizing disclosures of protected  
15 health information and for revoking such authoriza-  
16 tions.

17 (2) PROCEDURES OF TRUSTEE.—The proce-  
18 dures established by the trustee for the exercise of  
19 such rights.

20 (3) AUTHORIZED DISCLOSURES.—The disclo-  
21 sures of protected health information that are au-  
22 thorized under this Act.

23 (b) DISSEMINATION OF NOTICE.—A health informa-  
24 tion trustee who is required by subtitle A to comply with  
25 this section—

1           (1) shall, upon request, provide any person with  
2           a copy of the trustee's notice of information prac-  
3           tices (described in subsection (a)); and

4           (2) shall make reasonable efforts to inform per-  
5           sons in a clear and conspicuous manner of the exist-  
6           ence and availability of such notice.

7           (c) MODEL NOTICE.—Not later than July 1, 1996,  
8           the Secretary, after notice and opportunity for public com-  
9           ment, shall develop and disseminate a model notice of in-  
10          formation practices for use by health information trustees  
11          under this section.

12       **SEC. 114. ACCOUNTING FOR DISCLOSURES.**

13          (a) IN GENERAL.—A health information trustee who  
14          is required by subtitle A to comply with this section shall  
15          create and maintain, with respect to any protected health  
16          information the trustee discloses, a record of—

17               (1) the date and purpose of the disclosure;

18               (2) the name of the person to whom the disclo-  
19          sure was made;

20               (3) the address of the person to whom the dis-  
21          closure was made or the location to which the disclo-  
22          sure was made; and

23               (4) the information disclosed, but only where  
24          the recording of the information disclosed is prac-  
25          ticable, taking into account the technical capabilities

1 of the system used to maintain the record and the  
2 costs of such maintenance.

3 (b) DISCLOSURE RECORD PART OF INFORMATION.—

4 A record created and maintained under subsection (a)  
5 shall be maintained as part of the protected health infor-  
6 mation to which the record pertains.

7 **SEC. 115. SECURITY.**

8 (a) IN GENERAL.—A health information trustee who  
9 is required by subtitle A to comply with this section shall  
10 maintain reasonable and appropriate administrative, tech-  
11 nical, and physical safeguards—

12 (1) to ensure the integrity and confidentiality of  
13 protected health information created or received by  
14 the trustee;

15 (2) to protect against any anticipated threats or  
16 hazards to the security or integrity of, improper dis-  
17 closures of, or unauthorized uses of, such informa-  
18 tion; and

19 (3) otherwise ensure compliance with this Act  
20 by the trustee and the officers and employees of the  
21 trustee.

22 (b) SPECIFIC SECURITY MEASURES.—A health infor-  
23 mation trustee who is required by subtitle A to comply  
24 with this section shall ensure that—

1           (1) officers, employees, and affiliated persons of  
2           the trustee who have access to protected health in-  
3           formation created or received by the trustee are reg-  
4           ularly trained in the requirements governing such  
5           information;

6           (2) audit trails are maintained, but only where  
7           the maintenance of such trails is practicable, taking  
8           into account the technical capabilities of the system  
9           used to maintain protected health information and  
10          the costs of such maintenance; and

11          (3) appropriate signs and warnings are posted  
12          to advise persons described in paragraph (1) regard-  
13          ing the need to secure protected health information.

14       **PART 2—USE AND DISCLOSURE OF PROTECTED**  
15                               **HEALTH INFORMATION**

16       **SEC. 121. GENERAL LIMITATIONS ON USE AND DISCLO-**  
17                               **SURE.**

18          (a) USE.—A health information trustee may use pro-  
19          tected health information only for a purpose that is com-  
20          patible with and related to the purpose for which the infor-  
21          mation—

22               (1) was collected; or

23               (2) was received by the trustee.

1 (b) DISCLOSURE.—A health information trustee may  
2 disclose protected health information only for a purpose  
3 that is authorized under this Act.

4 (c) SCOPE OF USES AND DISCLOSURES.—

5 (1) IN GENERAL.—A use or disclosure of pro-  
6 tected health information by a health information  
7 trustee shall be limited, when practicable, to the  
8 minimum amount of information necessary to ac-  
9 complish the purpose for which the information is  
10 used or disclosed.

11 (2) GUIDELINES.—Not later than July 1, 1996,  
12 the Secretary, after notice and opportunity for pub-  
13 lic comment, shall issue guidelines to implement  
14 paragraph (1), which shall take into account the  
15 technical capabilities of the record systems used to  
16 maintain protected health information and the costs  
17 of limiting use and disclosure.

18 (d) IDENTIFICATION OF DISCLOSED INFORMATION  
19 AS PROTECTED INFORMATION.—Except with respect to  
20 protected health information that is disclosed under sec-  
21 tion 111 (relating to inspection) or 124 (relating to next  
22 of kin and directory information), and except as provided  
23 in subsection (e), a health information trustee may dis-  
24 close protected health information only if such information

1 is clearly identified as protected health information that  
2 is subject to this Act.

3 (e) ROUTINE DISCLOSURES SUBJECT TO WRITTEN  
4 AGREEMENT.—A health information trustee who routinely  
5 discloses protected health information to a person may  
6 satisfy the identification requirement in subsection (d)  
7 through the conclusion of a written agreement between the  
8 trustee and the person with respect to the identification  
9 of protected health information.

10 (f) AGREEMENT TO LIMIT USE OR DISCLOSURE.—  
11 A health information trustee who receives protected health  
12 information from any person pursuant to a written agree-  
13 ment to restrict use or disclosure of the information to  
14 a greater extent than would otherwise be required under  
15 this Act shall comply with the terms of the agreement,  
16 except where use or disclosure of the information in viola-  
17 tion of the agreement is required by law. A trustee who  
18 fails to comply with the preceding sentence shall be subject  
19 to section 161 (relating to civil actions) with respect to  
20 such failure.

21 (f) NO GENERAL REQUIREMENT TO DISCLOSE.—Ex-  
22 cept as provided in section 111, nothing in this Act shall  
23 be construed to require a health information trustee to dis-  
24 close protected health information not otherwise required  
25 to be disclosed by law.



1 **SEC. 122. AUTHORIZATIONS FOR DISCLOSURE OF PRO-**  
2 **TECTED HEALTH INFORMATION.**

3 (a) STATEMENT OF INTENDED USES AND DISCLO-  
4 SURES.—

5 (1) IN GENERAL.—A person who wishes to re-  
6 ceive from a health information trustee protected  
7 health information about an individual pursuant to  
8 an authorization executed by the individual shall  
9 supply the individual, in writing and on a form that  
10 is distinct from the authorization, with a statement  
11 of the uses for which the person intends the infor-  
12 mation and the disclosures the person intends to  
13 make of the information. Such statement shall be  
14 supplied on or before the date on which the author-  
15 ization is executed.

16 (2) ENFORCEMENT.—If the person uses or dis-  
17 closes the information in a manner that is inconsis-  
18 tent with such statement, the person shall be subject  
19 to section 161 (relating to civil actions) with respect  
20 to such failure, except where such use or disclosure  
21 is required by law.

22 (3) MODEL STATEMENTS.—Not later than July  
23 1, 1996, the Secretary, after notice and opportunity  
24 for public comment, shall develop and disseminate  
25 model statements of intended uses and disclosures of  
26 the type described in paragraph (1).

1 (b) WRITTEN AUTHORIZATIONS.—A health informa-  
2 tion trustee who is authorized by subtitle A to disclose  
3 protected health information under this section may dis-  
4 close such information pursuant to an authorization exe-  
5 cuted by the individual who is the subject of the informa-  
6 tion, if each of the following requirements is met:

7 (1) WRITING.—The authorization is in writing,  
8 signed by the individual, and dated on the date of  
9 such signature.

10 (2) SEPARATE FORM.—The authorization is not  
11 on a form used to authorize or facilitate the provi-  
12 sion of, or payment for, health care.

13 (3) TRUSTEE DESCRIBED.—The trustee is spe-  
14 cifically named or generically described in the au-  
15 thorization as authorized to disclose such informa-  
16 tion.

17 (4) RECIPIENT DESCRIBED.—The person to  
18 whom the information is to be disclosed is specifi-  
19 cally named or generically described in the author-  
20 ization as a person to whom such information may  
21 be disclosed.

22 (5) STATEMENT OF INTENDED USES AND DIS-  
23 CLOSURES RECEIVED.—The authorization contains  
24 an acknowledgment that the individual has received

1 a statement described in subsection (a) from such  
2 person.

3 (6) INFORMATION DESCRIBED.—The informa-  
4 tion to be disclosed is described in the authorization.

5 (7) AUTHORIZATION TIMELY RECEIVED.—The  
6 authorization is received by the trustee during a pe-  
7 riod described in subsection (d)(1).

8 (8) DISCLOSURE TIMELY MADE.—The disclo-  
9 sure occurs during a period described in subsection  
10 (d)(2).

11 (c) AUTHORIZATIONS REQUESTED IN CONNECTION  
12 WITH PROVISION OF HEALTH CARE.—

13 (1) IN GENERAL.—A health use trustee or a  
14 public health trustee may not request that an indi-  
15 vidual provide to any person an authorization de-  
16 scribed in subsection (b) on a day on which—

17 (A) the trustee provides health care to the  
18 individual; or

19 (B) in the case of a trustee that is a health  
20 facility, the individual is admitted into the facil-  
21 ity as a resident or inpatient in order to receive  
22 health care.

23 (2) EXCEPTION.—Paragraph (1) does not apply  
24 if a health use trustee or a public health trustee re-  
25 quests that an individual provide an authorization

1 described in subsection (b) for the purpose of assist-  
2 ing the individual in obtaining counseling or social  
3 services from a person other than the trustee.

4 (d) TIME LIMITATIONS ON AUTHORIZATIONS.—

5 (1) RECEIPT BY TRUSTEE.—For purposes of  
6 subsection (b)(7), an authorization is timely received  
7 if it is received by the trustee during—

8 (A) the 1-year period beginning on the  
9 date that the authorization is signed under sub-  
10 section (b)(1), if the authorization permits the  
11 disclosure of protected health information to a  
12 health use trustee, public health trustee, or per-  
13 son who provides counseling or social services to  
14 individuals; or

15 (B) the 30-day period beginning on the  
16 date that the authorization is signed under sub-  
17 section (b)(1), if the authorization permits the  
18 disclosure of protected health information to a  
19 person other than a person described in sub-  
20 paragraph (A).

21 (2) DISCLOSURE BY TRUSTEE.—For purposes  
22 of subsection (b)(8), a disclosure is timely made if  
23 it occurs before—

1 (A) the date or event (if any) specified in  
2 the authorization upon which the authorization  
3 expires; and

4 (B) the expiration of the 6-month period  
5 beginning on the date the trustee receives the  
6 authorization.

7 (e) REVOCATION OR AMENDMENT OF AUTHORIZA-  
8 TION.—

9 (1) IN GENERAL.—An individual in writing may  
10 revoke or amend an authorization described in sub-  
11 section (b), in whole or in part, at any time, except  
12 when—

13 (A) disclosure of protected health informa-  
14 tion has been authorized to permit validation of  
15 expenditures for health care, or based on health  
16 condition, by a government authority; or

17 (B) action has been taken in reliance on  
18 the authorization.

19 (2) NOTICE OF REVOCATION.—A health infor-  
20 mation trustee who discloses protected health infor-  
21 mation pursuant to an authorization that has been  
22 revoked shall not be subject to any liability or pen-  
23 alty under this Act if—

24 (A) the reliance was in good faith;

1 (B) the trustee had no notice of the rev-  
2 ocation; and

3 (C) the disclosure was otherwise in accord-  
4 ance with the requirements of this Act.

5 (f) EFFECT OF AUTHORIZATION ON PRIVILEGES.—  
6 The execution by an individual of an authorization that  
7 meets the requirements of this section for the purpose of  
8 receiving health care or providing for the payment for  
9 health care shall not be construed as affecting any privi-  
10 lege that the individual may have under common or statu-  
11 tory law in a court of a State or the United States.

12 (g) ADDITIONAL REQUIREMENTS OF TRUSTEE.—A  
13 health information trustee may impose requirements for  
14 an authorization that are in addition to the requirements  
15 in this section.

16 (h) COPY.—A health information trustee who dis-  
17 closes protected health information pursuant to an author-  
18 ization under this section shall maintain a copy of the au-  
19 thorization as part of the information.

20 (i) CONSTRUCTION.—This section shall not be con-  
21 strued—

22 (1) to require a health information trustee to  
23 disclose protected health information; or

1           (2) to limit the right of a health information  
2 trustee to charge a fee for the disclosure or repro-  
3 duction of protected health information.

4           (j) SUBPOENAS, WARRANTS, AND SEARCH WAR-  
5 RANTS.—If a health information trustee discloses pro-  
6 tected health information pursuant to an authorization in  
7 order to comply with an administrative subpoena or war-  
8 rant or a judicial subpoena or search warrant, the author-  
9 ization—

10           (1) shall specifically authorize the disclosure for  
11 the purpose of permitting the trustee to comply with  
12 the subpoena, warrant, or search warrant; and

13           (2) shall otherwise meet the requirements in  
14 this section.

15 **SEC. 123. TREATMENT, PAYMENT, AND OVERSIGHT.**

16           (a) IN GENERAL.—A health information trustee who  
17 is authorized by subtitle A to disclose protected health in-  
18 formation under this section may disclose such informa-  
19 tion to a health use trustee if the disclosure is—

20           (1) for the purpose of providing health care to  
21 an individual and the individual who is the subject  
22 of the information has not previously objected to the  
23 disclosure in writing;

24           (2) for the purpose of providing for the pay-  
25 ment for health care furnished to an individual; or

1           (3) for use by a health oversight agency for a  
2           purpose authorized by law.

3           (b) USE IN ACTION AGAINST INDIVIDUAL.—Pro-  
4           tected health information about an individual that is dis-  
5           closed under this section may not be used in, or disclosed  
6           to any person for use in, any administrative, civil, or crimi-  
7           nal action or investigation directed against the individual,  
8           except an action or investigation arising out of and di-  
9           rectly related to receipt of health care or payment for  
10          health care.

11       **SEC. 124. NEXT OF KIN AND DIRECTORY INFORMATION.**

12          (a) NEXT OF KIN.—A health information trustee who  
13          is authorized by subtitle A to disclose protected health in-  
14          formation under this section may disclose such informa-  
15          tion to the next of kin or legal representative (as defined  
16          under State law) of the individual who is the subject of  
17          the information, or to a person with whom the individual  
18          has a personal relationship, if—

19               (1) the individual has not previously objected to  
20               the disclosure;

21               (2) the disclosure is consistent with accepted  
22               medical practice; and

23               (3) the information disclosed relates to the on-  
24               going provision of health care to the individual.



1 (b) DIRECTORY INFORMATION.—A health informa-  
2 tion trustee who is authorized by subtitle A to disclose  
3 protected health information under this section may dis-  
4 close such information to any person, if—

5 (1) the information does not reveal specific in-  
6 formation about the physical or mental condition of  
7 the individual or health care provided to the individ-  
8 ual;

9 (2) the individual who is the subject of the in-  
10 formation has not objected in writing to the disclo-  
11 sure;

12 (3) the disclosure is consistent with accepted  
13 medical practice; and

14 (4) the information consists only of 1 or more  
15 of the following items:

16 (A) The name of the individual.

17 (B) If the individual is receiving health  
18 care from a health care provider on a premises  
19 controlled by the provider, the location of the  
20 individual on such premises.

21 (C) If the individual is receiving health  
22 care from a health care provider on a premises  
23 controlled by the provider, the general health  
24 status of the individual, described in terms of

1           critical, poor, fair, stable, satisfactory, or terms  
2           denoting similar conditions.

3           (c) RECIPIENTS.—A person to whom protected health  
4 information is disclosed under this section shall not, by  
5 reason of such disclosure, be subject to any requirement  
6 under this Act.

7 **SEC. 125. PUBLIC HEALTH.**

8           (a) IN GENERAL.—A health information trustee who  
9 is authorized by subtitle A to disclose protected health in-  
10 formation under this section may disclose such informa-  
11 tion to a public health trustee for use in legally author-  
12 ized—

- 13           (1) disease or injury reporting;  
14           (2) public health surveillance; or  
15           (3) public health investigation.

16           (b) USE IN ACTION AGAINST INDIVIDUAL.—Pro-  
17 tected health information about an individual that is dis-  
18 closed under this section may not be used in, or disclosed  
19 to any person for use in, any administrative, civil, or crimi-  
20 nal action or investigation directed against the individual,  
21 except where the use or disclosure is authorized by law  
22 for protection of the public health.

23 **SEC. 126. EMERGENCY CIRCUMSTANCES.**

24           A health information trustee who is authorized by  
25 subtitle A to disclose protected health information under

1 this section may disclose such information to alleviate  
2 emergency circumstances affecting the health or safety of  
3 an individual.

4 **SEC. 127. JUDICIAL, ADMINISTRATIVE, AND OTHER LEGAL**  
5 **PURPOSES.**

6 (a) IN GENERAL.—A health information trustee who  
7 is authorized by subtitle A to disclose protected health in-  
8 formation under this section may disclose such informa-  
9 tion—

10 (1) pursuant to the Federal Rules of Civil Pro-  
11 cedure, the Federal Rules of Criminal Procedure, or  
12 comparable rules of other courts or administrative  
13 agencies in connection with litigation or proceedings  
14 to which the individual who is the subject of the in-  
15 formation is a party and in which the individual has  
16 placed the individual's physical or mental condition  
17 in issue;

18 (2) pursuant to a law requiring the reporting of  
19 specific medical information to law enforcement au-  
20 thorities;

21 (3) if the disclosure is of information described  
22 in paragraph (2) and the trustee is operated by a  
23 Federal agency;

24 (4) if directed by a court in connection with a  
25 court-ordered examination of an individual; or

1           (5) to assist in the identification of a dead indi-  
2       vidual.

3           (b) WRITTEN STATEMENT.—A person seeking pro-  
4       tected health information about an individual maintained  
5       by health information trustee under—

6           (1) subsection (a)(1) shall provide the trustee  
7       with a written statement that the individual is a  
8       party to the litigation or proceedings for which the  
9       information is sought; or

10          (2) subsection (a)(5) shall provide the trustee  
11       with a written statement that the information is  
12       sought to assist in the identification of a dead indi-  
13       vidual.

14          (c) USE AND DISCLOSURE.—A person to whom pro-  
15       tected health information is disclosed under this section  
16       may use and disclose the information only under a condi-  
17       tion described in subsection (a).

18       **SEC. 128. HEALTH RESEARCH.**

19          (a) IN GENERAL.—A health information trustee who  
20       is authorized by subtitle A to disclose protected health in-  
21       formation under this section may disclose such informa-  
22       tion to a public health trustee if the disclosure is for use  
23       in a health research project that has been determined by  
24       an institutional review board to be—

1           (1) of sufficient importance so as to outweigh  
2           the intrusion into the privacy of the individual who  
3           is the subject of the information that would result  
4           from the disclosure; and

5           (2) reasonably impracticable to conduct without  
6           such information.

7           (b) OBLIGATIONS OF RECIPIENT.—A person who re-  
8           ceives protected health information pursuant to subsection  
9           (a) shall remove or destroy, at the earliest opportunity  
10          consistent with the purposes of the project, information  
11          that would enable 1 or more individuals to be identified,  
12          unless an institutional review board has determined that  
13          there is a health or research justification for retention of  
14          such identifiers and there is an adequate plan to protect  
15          the identifiers from use and disclosure that is inconsistent  
16          with this Act.

17       **SEC. 129. LAW ENFORCEMENT.**

18          (a) IN GENERAL.—A health information trustee who  
19          is authorized by subtitle A to disclose protected health in-  
20          formation under this section may disclose such informa-  
21          tion to a law enforcement agency (other than a health  
22          oversight agency) if the information is—

23               (1) for use in an investigation or prosecution of  
24               a health information trustee;

1           (2) to assist in the identification or location of  
2           a suspect, fugitive, or witness in a law enforcement  
3           inquiry;

4           (3) in connection with criminal activity commit-  
5           ted against the trustee or an affiliated person of the  
6           trustee or on premises controlled by the trustee; or

7           (4) needed to determine whether a crime has  
8           been committed and the nature of any crime that  
9           may have been committed (other than a crime that  
10          may have been committed by the individual who is  
11          the subject of the information).

12          (b) CERTIFICATION.—Where a law enforcement  
13          agency requests a health information trustee to disclose  
14          protected health information under this section, the agen-  
15          cy shall provide the trustee with a written certification  
16          that—

17                (1) is signed by a supervisory official of a rank  
18                designated by the head of the agency;

19                (2) specifies the information requested; and

20                (3) states that the information is needed for a  
21                lawful purpose under this section.

22          (c) RESTRICTIONS ON DISCLOSURE AND USE.—Pro-  
23          tected health information about an individual that is dis-  
24          closed by a health information trustee to a law enforce-  
25          ment agency under this section—

1           (1) may not be disclosed for, or used in, any  
2           administrative, civil, or criminal action or investiga-  
3           tion against the individual, except in an action or in-  
4           vestigation arising out of and directly related to the  
5           action or investigation for which the information was  
6           obtained; and

7           (2) may not be otherwise used or disclosed by  
8           the agency, unless the use or disclosure is necessary  
9           to fulfill the purpose for which the information was  
10          obtained and is not otherwise prohibited by law.

11 **SEC. 130. SUBPOENAS, WARRANTS, AND SEARCH WAR-**  
12 **RANTS.**

13          (a) IN GENERAL.—A health information trustee who  
14 is authorized by subtitle A to disclose protected health in-  
15 formation under this section may disclose such informa-  
16 tion if the disclosure is pursuant to any of the following:

17           (1) A subpoena issued under the authority of a  
18           grand jury and the trustee is provided a written cer-  
19           tification by the grand jury seeking the information  
20           that the grand jury has complied with the applicable  
21           access provisions of section 141 or 143(a).

22           (2) An administrative subpoena or warrant or  
23           a judicial subpoena or search warrant and the trust-  
24           ee is provided a written certification by the person  
25           seeking the information that the person has com-

1       plied with the applicable access provisions of section  
2       141 or 143(a).

3           (3) An administrative subpoena or warrant or  
4       a judicial subpoena or search warrant and the dis-  
5       closure otherwise meets the conditions of one of sec-  
6       tions 123 through 129.

7       (b) RESTRICTIONS ON USE AND DISCLOSURE.—Pro-  
8       tected health information about an individual that is dis-  
9       closed by a health information trustee under—

10           (1) subsection (a) may not be disclosed for, or  
11       used in, any administrative, civil, or criminal action  
12       or investigation against the individual, except in an  
13       action or investigation arising out of and directly re-  
14       lated to the inquiry for which the information was  
15       obtained;

16           (2) subsection (a)(2) may not be otherwise used  
17       or disclosed by the recipient unless the use or disclo-  
18       sure is necessary to fulfill the purpose for which the  
19       information was obtained; and

20           (3) subsection (a)(3) may not be used or dis-  
21       closed by the recipient unless the recipient complies  
22       with the conditions and restrictions on use and dis-  
23       closure with which the recipient would have been re-  
24       quired to comply if the disclosure by the trustee had  
25       been made under the section referred to in sub-



1 section (a)(3) the conditions of which were met by  
2 the disclosure.

3 (c) RESTRICTIONS ON GRAND JURIES.—Protected  
4 health information that is disclosed by a health informa-  
5 tion trustee under subsection (a)(1)—

6 (1) shall be returnable on a date when the  
7 grand jury is in session and actually presented to  
8 the grand jury;

9 (2) shall be used only for the purpose of consid-  
10 ering whether to issue an indictment or report by  
11 that grand jury, or for the purpose of prosecuting a  
12 crime for which that indictment or report is issued,  
13 or for a purpose authorized by rule 6(e) of the Fed-  
14 eral Rules of Criminal Procedure or a comparable  
15 State rule;

16 (3) shall be destroyed or returned to the trustee  
17 if not used for one of the purposes specified in para-  
18 graph (2); and

19 (4) shall not be maintained, or a description of  
20 the contents of such information shall not be main-  
21 tained, by any government authority other than in  
22 the sealed records of the grand jury, unless such in-  
23 formation has been used in the prosecution of a  
24 crime for which the grand jury issued an indictment  
25 or presentment or for a purpose authorized by rule

1       6(e) of the Federal Rules of Criminal Procedure or  
2       a comparable State rule.

3       (d) COPY AS PART OF PROTECTED INFORMATION.—  
4       A health information trustee who discloses protected  
5       health information under this section shall maintain a  
6       copy of the applicable subpoena, warrant, or search war-  
7       rant as part of the information.

8       (e) CONSTRUCTION.—Nothing in this section shall be  
9       construed as authority for a health information trustee to  
10      refuse to comply with an administrative subpoena or war-  
11      rant or a judicial subpoena or search warrant that meets  
12      the requirements of this Act.

## 13      **Subtitle C—Access Procedures and** 14      **Challenge Rights**

### 15      **SEC. 141. ACCESS PROCEDURES FOR LAW ENFORCEMENT** 16                      **SUBPOENAS, WARRANTS, AND SEARCH WAR-** 17                      **RANTS.**

18      (a) PROBABLE CAUSE REQUIREMENT.—A govern-  
19      ment authority may not obtain protected health informa-  
20      tion about an individual from a health information trustee  
21      under paragraph (1) or (2) of section 130(a) for use in  
22      a law enforcement inquiry unless there is probable cause  
23      to believe that the information is relevant to a legitimate  
24      law enforcement inquiry being conducted by the govern-  
25      ment authority.

1 (b) WARRANTS AND SEARCH WARRANTS.—A govern-  
2 ment authority that obtains protected health information  
3 about an individual from a health information trustee  
4 under circumstances described in subsection (a) and pur-  
5 suant to a warrant or search warrant shall, not later than  
6 30 days after the date the warrant was served on the  
7 trustee, serve the individual with, or mail to the last  
8 known address of the individual, a copy of the warrant.

9 (c) SUBPOENAS.—Except as provided in subsection  
10 (d), a government authority may not obtain protected  
11 health information about an individual from a health in-  
12 formation trustee under circumstances described in sub-  
13 section (a) and pursuant to a subpoena unless a copy of  
14 the subpoena has been served by hand delivery upon the  
15 individual, or mailed to the last known address of the indi-  
16 vidual, on or before the date on which the subpoena was  
17 served on the trustee, together with a notice (published  
18 by the Secretary under section 145(1)) of the individual's  
19 right to challenge the subpoena in accordance with section  
20 142, and—

21 (1) 30 days have passed from the date of serv-  
22 ice, or 30 days have passed from the date of mailing,  
23 and within such time period the individual has not  
24 initiated a challenge in accordance with section 142;  
25 or

1           (2) disclosure is ordered by a court under sec-  
2           tion 142.

3           (d) APPLICATION FOR DELAY.—

4           (1) IN GENERAL.—A government authority may  
5           apply to an appropriate court to delay (for an initial  
6           period of not longer than 90 days) serving a copy of  
7           a subpoena and a notice otherwise required under  
8           subsection (c) with respect to a law enforcement in-  
9           quiry. The government authority may apply to the  
10          court for extensions of the delay.

11          (2) REASONS FOR DELAY.—An application for  
12          a delay, or extension of a delay, under this sub-  
13          section shall state, with reasonable specificity, the  
14          reasons why the delay or extension is being sought.

15          (3) EX PARTE ORDER.—The court shall enter  
16          an ex parte order delaying, or extending the delay  
17          of, the notice and an order prohibiting the trustee  
18          from revealing the request for, or the disclosure of,  
19          the protected health information being sought if the  
20          court finds that—

21                  (A) the inquiry being conducted is within  
22                  the lawful jurisdiction of the government au-  
23                  thority seeking the protected health informa-  
24                  tion;

1 (B) there is probable cause to believe that  
2 the protected health information being sought is  
3 relevant to a legitimate law enforcement inquiry  
4 being conducted by the government authority;

5 (C) the government authority's need for  
6 the information outweighs the privacy interest  
7 of the individual who is the subject of the infor-  
8 mation; and

9 (D) there are reasonable grounds to believe  
10 that receipt of a notice by the individual will re-  
11 sult in—

12 (i) endangering the life or physical  
13 safety of any individual;

14 (ii) flight from prosecution;

15 (iii) destruction of or tampering with  
16 evidence or the information being sought;

17 or

18 (iv) intimidation of potential wit-  
19 nesses.

20 (4) SERVICE OF APPLICATION ON INDIVID-  
21 UAL.—Upon the expiration of a period of delay of  
22 notice under this subsection, the government author-  
23 ity shall serve upon the individual, with the service  
24 of the subpoena and the notice, a copy of any appli-  
25 cations filed and approved under this subsection.

1 **SEC. 142. CHALLENGE PROCEDURES FOR LAW ENFORCE-**  
2 **MENT SUBPOENAS.**

3 (a) MOTION TO QUASH SUBPOENA.—Within 30 days  
4 of the date of service, or 30 days of the date of mailing,  
5 of a subpoena of a government authority seeking protected  
6 health information about an individual from a health in-  
7 formation trustee under paragraph (1) or (2) of section  
8 130(a) (except a subpoena issued in compliance with the  
9 provisions of section 143(a)), the individual may file (with-  
10 out filing fee) a motion to quash the subpoena—

11 (1) in the case of a State judicial subpoena, in  
12 the court which issued the subpoena;

13 (2) in the case of a subpoena issued under the  
14 authority of a State that is not a State judicial sub-  
15 poena, in a court of competent jurisdiction;

16 (3) in the case of a subpoena issued under the  
17 authority of a Federal court, in any court of the  
18 United States of competent jurisdiction; or

19 (4) in the case of any other subpoena issued  
20 under the authority of the United States, in—

21 (A) the United States district court for the  
22 district in which the individual resides or in  
23 which the subpoena was issued; or

24 (B) another United States district court of  
25 competent jurisdiction.

1 (b) COPY.—A copy of the motion shall be served by  
2 the individual upon the government authority by delivery  
3 of registered or certified mail.

4 (c) AFFIDAVITS AND SWORN DOCUMENTS.—The gov-  
5 ernment authority may file with the court such affidavits  
6 and other sworn documents as sustain the validity of the  
7 subpoena. The individual may file with the court, within  
8 5 days of the date of the authority's filing, affidavits and  
9 sworn documents in response to the authority's filing. The  
10 court, upon the request of the individual, the government  
11 authority, or both, may proceed in camera.

12 (d) PROCEEDINGS AND DECISION ON MOTION.—The  
13 court may conduct such proceedings as it deems appro-  
14 priate to rule on the motion. All such proceedings shall  
15 be completed, and the motion ruled on, within 10 calendar  
16 days of the date of the government authority's filing.

17 (e) EXTENSION OF TIME LIMITS FOR GOOD  
18 CAUSE.—The court, for good cause shown, may at any  
19 time in its discretion enlarge the time limits established  
20 by subsections (c) and (d).

21 (f) STANDARD FOR DECISION.—A court may deny an  
22 individual's timely motion under subsection (a) if it finds  
23 that there is probable cause to believe that the protected  
24 health information being sought is relevant to a legitimate  
25 law enforcement inquiry being conducted by the govern-

1 ment authority, unless the court finds that the individual's  
2 privacy interest outweighs the government authority's  
3 need for the information. The individual shall have the  
4 burden of demonstrating that the individual's privacy in-  
5 terest outweighs the need established by the government  
6 authority for the information.

7 (g) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
8 PRIVACY INTEREST.—In determining under subsection (f)  
9 whether an individual's privacy interest outweighs the gov-  
10 ernment authority's need for the information, the court  
11 shall consider—

12 (1) the particular purpose for which the infor-  
13 mation was collected by the trustee;

14 (2) the degree to which disclosure of the infor-  
15 mation will embarrass, injure, or invade the privacy  
16 of the individual;

17 (3) the effect of the disclosure on the individ-  
18 ual's future health care;

19 (4) the importance of the inquiry being con-  
20 ducted by the government authority, and the impor-  
21 tance of the information to that inquiry; and

22 (5) any other factor deemed relevant by the  
23 court.

24 (h) ATTORNEY'S FEES.—In the case of any motion  
25 brought under subsection (a) in which the individual has



1 substantially prevailed, the court, in its discretion, may as-  
2 sess against a government authority a reasonable attor-  
3 ney's fee and other litigation costs (including expert fees)  
4 reasonably incurred.

5 (i) NO INTERLOCUTORY APPEAL.—A court ruling de-  
6 nying a motion to quash under this section shall not be  
7 deemed a final order and no interlocutory appeal may be  
8 taken therefrom by the individual. An appeal of such a  
9 ruling may be taken by the individual within such period  
10 of time as is provided by law as part of any appeal from  
11 a final order in any legal proceeding initiated against the  
12 individual arising out of or based upon the protect health  
13 information disclosed.

14 **SEC. 143. ACCESS AND CHALLENGE PROCEDURES FOR**  
15 **OTHER SUBPOENAS.**

16 (a) IN GENERAL.—A person (other than a govern-  
17 ment authority under section 141) may not obtain pro-  
18 tected health information about an individual from a  
19 health information trustee pursuant to a subpoena under  
20 section 130(a)(2) unless—

21 (1) a copy of the subpoena has been served  
22 upon the individual or mailed to the last known ad-  
23 dress of the individual on or before the date on  
24 which the subpoena was served on the trustee, to-  
25 gether with a notice (published by the Secretary

1 under section 145(2)) of the individual's right to  
2 challenge the subpoena, in accordance with sub-  
3 section (b); and

4 (2) either—

5 (A) 30 days have passed from the date of  
6 service or 30 days have passed from the date of  
7 the mailing and within such time period the in-  
8 dividual has not initiated a challenge in accord-  
9 ance with subsection (b); or

10 (B) disclosure is ordered by a court under  
11 such subsection.

12 (b) MOTION TO QUASH.—Within 30 days of the date  
13 of service or 30 days of the date of mailing of a subpoena  
14 seeking protected health information about an individual  
15 from a health information trustee under subsection (a),  
16 the individual may file (without filing fee) in any court  
17 of competent jurisdiction, a motion to quash the subpoena,  
18 with a copy served on the person seeking the information.  
19 The individual may oppose, or seek to limit, the subpoena  
20 on any grounds that would otherwise be available if the  
21 individual were in possession of the information.

22 (c) STANDARD FOR DECISION.—The court shall  
23 grant an individual's timely motion under subsection (b)  
24 if the person seeking the information has not sustained  
25 the burden of demonstrating that—

1           (1) there are reasonable grounds to believe that  
2           the information will be relevant to a lawsuit or other  
3           judicial or administrative proceeding; and

4           (2) the need of the person for the information  
5           outweighs the privacy interest of the individual.

6           (d) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
7           PRIVACY INTEREST.—In determining under subsection (c)  
8           whether the need of the person for the information out-  
9           weighs the privacy interest of the individual, the court  
10          shall consider—

11           (1) the particular purpose for which the infor-  
12           mation was collected by the trustee;

13           (2) the degree to which disclosure of the infor-  
14           mation will embarrass, injure, or invade the privacy  
15           of the individual;

16           (3) the effect of the disclosure on the individ-  
17           ual's future health care;

18           (4) the importance of the information to the  
19           lawsuit or proceeding; and

20           (5) any other factor deemed relevant by the  
21           court.

22           (e) ATTORNEY'S FEES.—In the case of any motion  
23           brought under subsection (b) by an individual against a  
24           person in which the individual has substantially prevailed,  
25           the court, in its discretion, may assess against the person

1 a reasonable attorney's fee and other litigation costs (in-  
2 cluding expert fees) reasonably incurred.

3 **SEC. 144. CONSTRUCTION OF SUBTITLE; SUSPENSION OF**  
4 **STATUTE OF LIMITATIONS.**

5 (a) IN GENERAL.—Nothing in this subtitle shall af-  
6 fect the right of a health information trustee to challenge  
7 requests for protected health information. Nothing in this  
8 subtitle shall entitle an individual who is the subject of  
9 such information to assert the rights of a health informa-  
10 tion trustee.

11 (b) EFFECT OF MOTION ON STATUTE OF LIMITA-  
12 TIONS.—If an individual who is the subject of protected  
13 health information files a motion under this Act which has  
14 the effect of delaying the access of a government authority  
15 to such information, any applicable statute of limitations  
16 is deemed to be tolled for the period beginning on the date  
17 such motion was filed and ending on the date on which  
18 the motion is decided.

19 **SEC. 145. RESPONSIBILITIES OF SECRETARY.**

20 Not later than July 1, 1996, the Secretary, after no-  
21 tice and opportunity for public comment, shall develop and  
22 disseminate a brief, clear, and easily understood notice—

23 (1) for use under subsection (c) of section 141,  
24 detailing the rights of an individual who wishes to  
25 challenge, under section 142, the disclosure of pro-

1 tected health information about the individual under  
2 such subsection; and

3 (2) for use under subsection (a) of section 143,  
4 detailing the rights of an individual who wishes to  
5 challenge, under subsection (b) of such section, the  
6 disclosure of protected health information about the  
7 individual under such section.

## 8 **Subtitle D—Miscellaneous** 9 **Provisions**

### 10 **SEC. 151. DEBIT AND CREDIT CARD TRANSACTIONS.**

11 (a) PAYMENT FOR HEALTH CARE THROUGH DEBIT  
12 OR CREDIT CARD.—If an individual pays a health infor-  
13 mation trustee for health care by presenting a debit or  
14 credit card or card number, the trustee may use or dis-  
15 close such protected health information about the individ-  
16 ual as is necessary for the processing of the debit or credit  
17 card transaction or the billing or collection of amounts  
18 charged or debited to the individual using the card or  
19 number.

20 (b) TRANSACTION PROCESSING BY CARD ISSUERS.—  
21 A person who is a debit or credit card issuer or is other-  
22 wise directly involved in the processing of credit or debit  
23 transactions or the billing or collection of amounts charged  
24 or debited thereto may only use or disclose protected  
25 health information about an individual—

1 (1) that has been disclosed in accordance with  
2 subsection (a); and

3 (2) when necessary for—

4 (A) the billing or collection of amounts  
5 charged or debited to the individual using a  
6 debit or credit card;

7 (B) the transfer of receivables, accounts,  
8 or interest therein;

9 (C) the audit of the credit or debit card ac-  
10 count information;

11 (D) compliance with Federal, State, or  
12 local law; and

13 (E) a properly authorized civil, criminal, or  
14 regulatory investigation by Federal, State, or  
15 local authorities.

16 **SEC. 152. ACCESS TO PROTECTED HEALTH INFORMATION**  
17 **OUTSIDE OF THE UNITED STATES.**

18 (a) IN GENERAL.—Except as provided in subsection  
19 (b), notwithstanding the provisions of subtitle A and part  
20 2 of subtitle B, a health information trustee may not per-  
21 mit any person who is not in a State to have access to  
22 protected health information about an individual unless  
23 one or more of the following conditions exist:

24 (1) SPECIFIC AUTHORIZATION.—The individual  
25 has specifically consented to the provision of such

1 access outside of the United States in an authoriza-  
2 tion that meets the requirements of section 122.

3 (2) EQUIVALENT INFORMATION PRACTICES.—

4 The provision of such access is authorized under this  
5 Act and the Secretary has determined that there are  
6 fair information practices for protected health infor-  
7 mation in the country where the access will be pro-  
8 vided that are equivalent to the fair information  
9 practices provided for by this Act.

10 (3) ACCESS REQUIRED BY LAW.—The provision  
11 of such access is required under—

12 (A) a Federal statute; or

13 (B) a treaty or other international agree-  
14 ment applicable to the United States.

15 (b) EXCEPTIONS.—Subsection (a) does not apply  
16 where the provision of access to protected health informa-  
17 tion—

18 (1) is to a foreign public health authority;

19 (2) is authorized under section 126; or

20 (3) is necessary for the purpose of providing for  
21 payment for health care that has been provided to  
22 an individual.

1 **SEC. 153. STANDARDS FOR ELECTRONIC DOCUMENTS AND**  
2 **COMMUNICATIONS.**

3 (a) STANDARDS.—Not later than July 1, 1996, the  
4 Secretary, after notice and opportunity for public com-  
5 ment, shall promulgate standards with respect to the cre-  
6 ation, transmission, receipt, and maintenance, in elec-  
7 tronic form, of each written document required or author-  
8 ized under this Act. Where a signature is required with  
9 respect to a written document under any other provision  
10 of this Act, such standards shall provide for an electronic  
11 substitute that serves the functional equivalent of a  
12 signature.

13 (b) TREATMENT OF COMPLYING DOCUMENTS AND  
14 COMMUNICATIONS.—An electronic document or commu-  
15 nication that satisfies the standards promulgated under  
16 subsection (a) with respect to such document or commu-  
17 nication shall be treated as satisfying the requirements of  
18 this Act that apply to an equivalent written document.

19 **SEC. 154. POWERS OF ATTORNEY.**

20 In the case of an individual who has executed a power  
21 of attorney, recognized under State law, authorizing a per-  
22 son to act as agent or attorney for the individual for one  
23 or more purposes, the person may exercise any right of  
24 the individual under this title that the person is authorized  
25 to exercise by the power of attorney, if—



1           (1) any condition precedent to the exercise of  
2           such right that is set forth in the power of attorney  
3           has been satisfied; and

4           (2) the power of attorney specifically references  
5           or describes the rights under this title that may be  
6           exercised by the person.

7   **SEC. 155. RIGHTS OF INCOMPETENTS.**

8           (a) EFFECT OF DECLARATION OF INCOMPETENCE.—  
9           Except as provided in section 154, if an individual has  
10          been declared to be incompetent by a court of competent  
11          jurisdiction, the rights of the individual under this title  
12          shall be exercised and discharged in the best interests of  
13          the individual through an authorized legal representative  
14          of the individual.

15          (b) NO COURT DECLARATION.—Except as provided  
16          in section 154, if a health care provider determines that  
17          an individual, who has not been declared to be incom-  
18          petent by a court of competent jurisdiction, suffers from  
19          a medical condition that prevents the individual from act-  
20          ing knowingly or effectively on the individual's own behalf,  
21          the right of the individual to authorize disclosure under  
22          section 122 may be exercised and discharged in the best  
23          interest of the individual by the individual's next of kin.

1 **SEC. 156. RIGHTS OF MINORS.**

2 (a) INDIVIDUALS WHO ARE 18 OR LEGALLY CAPA-  
3 BLE.—In the case of an individual—

4 (1) who is 18 years of age or older, all rights  
5 of the individual shall be exercised by the individual,  
6 except as provided in sections 154 and 155; or

7 (2) who, acting alone, has the legal capacity to  
8 apply for and obtain a type of medical examination,  
9 care, or treatment and who has sought such exam-  
10 ination, care, or treatment, the individual shall exer-  
11 cise all rights of an individual under this title with  
12 respect to protected health information relating to  
13 such examination, care, or treatment.

14 (b) INDIVIDUALS UNDER 18.—Except as provided in  
15 subsection (a)(2), in the case of an individual who is—

16 (1) under 14 years of age, all the individual's  
17 rights under this title shall be exercised through the  
18 parent or legal guardian of the individual; or

19 (2) 14, 15, 16, or 17 years of age, the right of  
20 inspection (under section 111), the right of amend-  
21 ment (under section 112), and the right to authorize  
22 disclosure of protected health information (under  
23 section 122) of the individual may be exercised ei-  
24 ther by the individual or by the parent or legal  
25 guardian of the individual.

## 1                   **Subtitle E—Enforcement**

### 2   **SEC. 161. CIVIL ACTIONS.**

3           (a) IN GENERAL.—Any individual whose rights under  
4 this title have been knowingly or negligently violated—

5               (1) by a health information trustee, or any  
6 other person, who is not described in paragraph (2),  
7 (3), (4), or (5) may maintain a civil action for actual  
8 damages and for equitable relief against the health  
9 information trustee or other person;

10              (2) by an officer or employee of the United  
11 States while the officer or employee was acting with-  
12 in the scope of the office or employment may main-  
13 tain a civil action for actual damages and for equi-  
14 table relief against the United States;

15              (3) by an officer or employee of any government  
16 authority of a State that has waived its sovereign  
17 immunity to a claim for damages resulting from a  
18 violation of this title while the officer or employee  
19 was acting within the scope of the office or employ-  
20 ment may maintain a civil action for actual damages  
21 and for equitable relief against the State govern-  
22 ment;

23              (4) by an officer or employee of a government  
24 of a State that is not described in paragraph (3)  
25 may maintain a civil action for actual damages and

1 for equitable relief against the officer or employee;  
2 or

3 (5) by an officer or employee of a government  
4 authority while the officer or employee was not act-  
5 ing within the scope of the office or employment  
6 may maintain a civil action for actual damages and  
7 for equitable relief against the officer or employee.

8 (b) KNOWING VIOLATIONS.—Any individual entitled  
9 to recover actual damages under this section because of  
10 a knowing violation of a provision of this title (other than  
11 subsection (c) or (d) of section 121) shall be entitled to  
12 recover the amount of the actual damages demonstrated  
13 or \$5000, whichever is greater.

14 (c) ACTUAL DAMAGES.—For purposes of this section,  
15 the term “actual damages” includes damages paid to com-  
16 pensate an individual for nonpecuniary losses such as  
17 physical and mental injury as well as damages paid to  
18 compensate for pecuniary losses.

19 (d) PUNITIVE DAMAGES; ATTORNEY’S FEES.—In  
20 any action brought under this section in which the com-  
21 plainant has prevailed because of a knowing violation of  
22 a provision of this title (other than subsection (c) or (d)  
23 of section 121), the court may, in addition to any relief  
24 awarded under subsections (a) and (b), award such puni-  
25 tive damages as may be warranted. In such an action, the

1 court, in its discretion, may allow the prevailing party a  
2 reasonable attorney's fee (including expert fees) as part  
3 of the costs, and the United States shall be liable for costs  
4 the same as a private person.

5 (e) INSPECTION AND AMENDMENT.—If a health in-  
6 formation trustee has established a written internal proce-  
7 dure that allows an individual who has been denied inspec-  
8 tion or amendment of protected health information to ap-  
9 peal the denial, the individual may not maintain a civil  
10 action in connection with the denial until the earlier of—

11 (1) the date the appeal procedure has been ex-  
12 hausted; or

13 (2) 3 months after the date the original request  
14 for inspection or amendment was made.

15 (f) NO LIABILITY FOR PERMISSIBLE DISCLO-  
16 SURES.—A health information trustee who makes a disclo-  
17 sure of protected health information about an individual  
18 that is permitted by this title and not otherwise prohibited  
19 by State or Federal statute shall not be liable to the indi-  
20 vidual for the disclosure under common law.

21 (g) NO LIABILITY FOR INSTITUTIONAL REVIEW  
22 BOARD DETERMINATIONS.—If the members of an institu-  
23 tional review board have in good faith determined that a  
24 health research project is of sufficient importance so as  
25 to outweigh the intrusion into the privacy of an individual

1 pursuant to section 128(a)(1), the members, the board,  
2 and the parent institution of the board shall not be liable  
3 to the individual as a result of such determination.

4 (h) GOOD FAITH RELIANCE ON CERTIFICATION.—A  
5 health information trustee who relies in good faith on a  
6 certification by a government authority or other person  
7 and discloses protected health information about an indi-  
8 vidual in accordance with this title shall not be liable to  
9 the individual for such disclosure.

10 **SEC. 162. CIVIL MONEY PENALTIES.**

11 (a) VIOLATION.—Any health information trustee who  
12 the Secretary determines has substantially failed to com-  
13 ply with the provisions of this Act shall be subject, in addi-  
14 tion to any other penalties that may be prescribed by law,  
15 to a civil money penalty of not more than \$10,000 for  
16 each such violation.

17 (b) PROCEDURES FOR IMPOSITION OF PENALTIES.—  
18 The provisions of section 1128A of the Social Security Act  
19 (other than subsections (a) and (b) and the second sen-  
20 tence of subsection (f)) shall apply to the imposition of  
21 a civil monetary penalty under this section in the same  
22 manner as such provisions apply with respect to the im-  
23 sition of a penalty under section 1128A of such Act.

1 **SEC. 163. ALTERNATIVE DISPUTE RESOLUTION.**

2 (a) IN GENERAL.—The Secretary shall, by regula-  
3 tion, develop alternative dispute resolution methods for  
4 use by individuals, health information trustees, and other  
5 persons in resolving claims under section 161.

6 (b) METHODS.—The methods under subsection (a)  
7 shall include at least the following:

8 (1) ARBITRATION.—The use of arbitration.

9 (2) MEDIATION.—The use of mediation.

10 (3) EARLY OFFERS OF SETTLEMENT.—The use  
11 of a process under which parties make early offers  
12 of settlement.

13 (c) STANDARDS FOR ESTABLISHING METHODS.—In  
14 developing alternative dispute resolution methods under  
15 subsection (a), the Secretary shall ensure that the meth-  
16 ods promote the resolution of claims in a manner that—

17 (1) is affordable for the parties involved;

18 (2) provides for timely resolution of claims;

19 (3) provides for the consistent and fair resolu-  
20 tion of claims; and

21 (4) provides for reasonably convenient access to  
22 dispute resolution for individuals.

23 **SEC. 164. AMENDMENTS TO CRIMINAL LAW.**

24 (a) IN GENERAL.—Title 18, United States Code, is  
25 amended by inserting after chapter 89 the following:

1                   **“CHAPTER 90—PROTECTED HEALTH**  
2   **INFORMATION**

“Sec.

“1831. Definitions.

“1832. Obtaining protected health information under false pretenses.

“1833. Monetary gain from obtaining protected health information under false pretenses.

“1834. Knowing and unlawful obtaining of protected health information.

“1835. Monetary gain from knowing and unlawful obtaining of protected health information.

“1836. Knowing and unlawful use or disclosure of protected health information.

“1837. Monetary gain from knowing and unlawful sale, transfer, or use of protected health information.

3   **“§ 1831. Definitions**

4           “As used in this chapter—

5                   “(1) the term ‘health information trustee’ has  
6           the meaning given such term in section 3(b)(3) of  
7           the Fair Health Information Practices Act of 1994;  
8           and

9                   “(2) the term ‘protected health information has  
10          the meaning given such term in section 3(a)(3) of  
11          such Act.

12   **“§ 1832. Obtaining protected health information**  
13   **under false pretenses**

14          “Whoever under false pretenses—

15                   “(1) requests or obtains protected health infor-  
16          mation from a health information trustee; or

17                   “(2) obtains from an individual an authoriza-  
18          tion for the disclosure of protected health informa-  
19          tion about the individual maintained by a health in-  
20          formation trustee;



1 shall be fined under this title or imprisoned not more than  
2 5 years, or both.

3 **“§ 1833. Monetary gain from obtaining protected**  
4 **health information under false pretenses**

5 “Whoever under false pretenses—

6 “(1) requests or obtains protected health infor-  
7 mation from a health information trustee with the  
8 intent to sell, transfer, or use such information for  
9 profit or monetary gain; or

10 “(2) obtains from an individual an authoriza-  
11 tion for the disclosure of protected health informa-  
12 tion about the individual maintained by a health in-  
13 formation trustee with the intent to sell, transfer, or  
14 use such authorization for profit or monetary gain;  
15 and knowingly sells, transfers, or uses such information  
16 or authorization for profit or monetary gain shall be fined  
17 under this title or imprisoned not more than 10 years, or  
18 both.

19 **“§ 1834. Knowing and unlawful obtaining of pro-**  
20 **tected health information**

21 “Whoever knowingly obtains protected health infor-  
22 mation from a health information trustee in violation of  
23 the Fair Health Information Practices Act of 1994, know-  
24 ing that such obtaining is unlawful, shall be fined under  
25 this title or imprisoned not more than 5 years, or both.

1 **“§ 1835. Monetary gain from knowing and unlawful**  
2 **obtaining of protected health information**

3 “Whoever knowingly—

4 “(1) obtains protected health information from  
5 a health information trustee in violation of the Fair  
6 Health Information Practices Act of 1994, knowing  
7 that such obtaining is unlawful and with the intent  
8 to sell, transfer, or use such information for profit  
9 or monetary gain; and

10 “(2) knowingly sells, transfers, or uses such in-  
11 formation for profit or monetary gain;

12 shall be fined under this title or imprisoned not more than  
13 10 years, or both.

14 **“§ 1836. Knowing and unlawful use or disclosure of**  
15 **protected health information**

16 “Whoever knowingly uses or discloses protected  
17 health information in violation of the Fair Health Infor-  
18 mation Practices Act of 1994, knowing that such use or  
19 disclosure is unlawful, shall be fined under this title or  
20 imprisoned not more than 5 years, or both.

21 **“§ 1837. Monetary gain from knowing and unlawful**  
22 **sale, transfer, or use of protected health**  
23 **information**

24 “Whoever knowingly sells, transfers, or uses pro-  
25 tected health information in violation of the Fair Health  
26 Information Practices Act of 1994, knowing that such

1 sale, transfer, or use is unlawful, shall be fined under this  
2 title or imprisoned not more than 10 years, or both.”.

3 (b) CLERICAL AMENDMENT.—The table of chapters  
4 for part I of title 18, United States Code, is amended by  
5 inserting after the item relating to chapter 89 the  
6 following:

“90. Protected health information ..... 1831”.

7 **TITLE II—AMENDMENTS TO**  
8 **TITLE 5, UNITED STATES CODE**

9 **SEC. 201. AMENDMENTS TO TITLE 5, UNITED STATES CODE.**

10 (a) NEW SUBSECTION.—Section 552a of title 5,  
11 United States Code, is amended by adding at the end the  
12 following:

13 “(w) MEDICAL EXEMPTIONS.—The head of an agen-  
14 cy that is a health information trustee (as defined in sec-  
15 tion 3(b)(3) of the Fair Health Information Practices Act  
16 of 1994) shall promulgate rules, in accordance with the  
17 requirements (including general notice) of subsections  
18 (b)(1), (b)(2), (b)(3), (c), and (e) of section 553 of this  
19 title, to exempt a system of records within the agency, to  
20 the extent that the system of records contains protected  
21 health information (as defined in section 3(a)(3) of such  
22 Act), from all provisions of this section except subsections  
23 (e)(1), (e)(2), subparagraphs (A) through (C) and (E)  
24 through (I) of subsection (e)(4), and subsections (e)(5),

1 (e)(6), (e)(9), (e)(12), (l), (m), (n), (o), (p), (q), (r),  
2 and (u).”.

3 (b) REPEAL.—Section 552a(f)(3) of title 5, United  
4 States Code, is amended by striking “pertaining to him,”  
5 and all that follows through the semicolon and inserting  
6 “pertaining to the individual;”.

7 **TITLE III—REGULATIONS; EF-**  
8 **FECTIVE DATES; APPLICABIL-**  
9 **ITY; AND RELATIONSHIP TO**  
10 **OTHER LAWS**

11 **SEC. 301. REGULATIONS.**

12 Not later than July 1, 1996, the Secretary shall pre-  
13 scribe regulations to carry out this Act.

14 **SEC. 302. EFFECTIVE DATES.**

15 (a) IN GENERAL.—Except as provided in subsection  
16 (b), this Act, and the amendments made by this Act, shall  
17 take effect on January 1, 1997.

18 (b) PROVISIONS EFFECTIVE IMMEDIATELY.—Any  
19 provision of this Act that imposes a duty on the Secretary  
20 shall take effect on the date of the enactment of this Act.

21 **SEC. 303. APPLICABILITY.**

22 (a) PROTECTED HEALTH INFORMATION.—Except as  
23 provided in subsections (b) and (c), the provisions of this  
24 Act shall apply to any protected health information that  
25 exists in a State on or after January 1, 1997, regardless

1 of whether the information existed or was disclosed prior  
2 to such date.

3 (b) SPECIAL PURPOSE TRUSTEES.—The provisions  
4 of this Act shall not apply to any special purpose trustee,  
5 except with respect to protected health information that  
6 is received by such a trustee on or after January 1, 1997.

7 (c) AUTHORIZATIONS FOR DISCLOSURES.—An au-  
8 thorization for the disclosure of protected health informa-  
9 tion about an individual that is executed by the individual  
10 before January 1, 1997, and is recognized and valid under  
11 State law on December 31, 1996, shall remain valid and  
12 shall not be subject to the requirements of section 122  
13 until July 1, 1998, or the occurrence of the date or event  
14 (if any) specified in the authorization upon which the au-  
15 thorization expires, whichever occurs earlier.

16 **SEC. 304. RELATIONSHIP TO OTHER LAWS.**

17 (a) STATE LAW.—Except as provided in subsections  
18 (b) and (c), this Act shall prevent the establishment, con-  
19 tinuing in effect, or enforcement of State law to the extent  
20 such law is inconsistent with a provision of this Act, but  
21 nothing in this Act shall be construed to indicate an intent  
22 on the part of Congress to occupy the field in which its  
23 provisions operate to the exclusion of the laws of any State  
24 on the same subject matter.

1           (b) PRIVILEGES.—This Act does not preempt or mod-  
2 ify State common or statutory law to the extent such law  
3 concerns a privilege of a witness or person in a court of  
4 the State. This Act does not supersede or modify Federal  
5 common or statutory law to the extent such law concerns  
6 a privilege of a witness or person in a court of the United  
7 States.

8           (c) CERTAIN DUTIES UNDER STATE OR FEDERAL  
9 LAW.—This Act shall not be construed to preempt, super-  
10 sede, or modify the operation of—

11           (1) any law that provides for the reporting of  
12 vital statistics such as birth or death information;

13           (2) any law requiring the reporting of abuse or  
14 neglect information about any individual; or

15           (3) subpart II of part E of title XXVI of the  
16 Public Health Service Act (relating to notifications  
17 of emergency response employees of possible expo-  
18 sure to infectious diseases).

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HR 4077 IH—2

HR 4077 IH—3

HR 4077 IH—4

HR 4077 IH—5