

106TH CONGRESS
1ST SESSION

H. R. 1941

To protect the privacy of personally identifiable health information.

IN THE HOUSE OF REPRESENTATIVES

MAY 25, 1999

Mr. CONDIT (for himself, Mr. WAXMAN, Mr. MARKEY, Mr. DINGELL, Mr. BROWN of Ohio, Mr. TURNER, Mr. LANTOS, Mr. CRAMER, Mr. WISE, Mr. OWENS, Mrs. TAUSCHER, Mr. TOWNS, Mr. SHOWS, Mr. KANJORSKI, Mrs. MINK of Hawaii, Mr. SANDERS, Mrs. MALONEY of New York, Ms. NORTON, Mr. FATTAH, Mr. CUMMINGS, Mr. KUCINICH, Mr. BLAGOJEVICH, Mr. DAVIS of Illinois, Mr. TIERNEY, Mr. ALLEN, Mr. FORD, Ms. SCHAKOWSKI, Mr. ROMERO-BARCELÓ, and Mr. STUPAK) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To protect the privacy of personally identifiable health information.

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 “Health Information Privacy Act”.

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

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

TITLE I—PROTECTION OF HEALTH INFORMATION

- Sec. 101. Restrictions on uses.
- Sec. 102. Restrictions on disclosure.
- Sec. 103. Standards for authorizations for use and disclosure.
- Sec. 104. Safeguards against misuse and prohibited disclosures.

TITLE II—RIGHTS OF PROTECTED INDIVIDUALS

- Sec. 201. Right of access.
- Sec. 202. Right of correction and amendment.
- Sec. 203. Right to review disclosure history.
- Sec. 204. Right to notice of information practices and opportunity to seek additional protections.

TITLE III—PERMISSIBLE DISCLOSURES OF PROTECTED HEALTH INFORMATION

- Sec. 301. Provision of and payment for health care.
- Sec. 302. Health oversight.
- Sec. 303. Public health.
- Sec. 304. Health research.
- Sec. 305. Law enforcement.
- Sec. 306. Judicial or administrative proceedings.
- Sec. 307. Other disclosures.
- Sec. 308. Redisclosures.

TITLE IV—MISCELLANEOUS PROVISIONS

- Sec. 401. Specific classes of individuals.
- Sec. 402. False pretenses.
- Sec. 403. Obligations of affiliated persons.
- Sec. 404. Prohibition of retaliation with respect to employment.
- Sec. 405. Mental health and other especially sensitive information.
- Sec. 406. Cessation of operations.
- Sec. 407. Conforming amendments to Federal Privacy Act.

TITLE V—GENERAL PROVISIONS

- Sec. 501. Authority of the Secretary.
- Sec. 502. Enforcement.
- Sec. 503. Relationship to other laws.
- Sec. 504. Definitions.
- Sec. 505. Effective date.

3 **SEC. 2. FINDINGS AND PURPOSES.**

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

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

4 (2) Individuals have a right to privacy regard-
5 ing their individually identifiable health information.

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

13 (4) Current legal protections for health infor-
14 mation vary from State to State and are inadequate
15 to protect the privacy of an individual's health infor-
16 mation and ensure fair information practices stand-
17 ards.

18 (5) The movement of individuals and health in-
19 formation across State lines, access to and exchange
20 of health information from automated data banks
21 and networks, and the emergence of multistate
22 health care providers and payers create a compelling
23 need for Federal law, rules, and procedures gov-
24 erning the use, maintenance, and disclosure of
25 health information.

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

8 (7) An individual needs access to health infor-
9 mation about the individual as a matter of fairness,
10 to enable the individual to make informed decisions
11 about health care, and to correct inaccurate or in-
12 complete information.

13 (b) PURPOSES.—The purposes of this Act are as fol-
14 lows:

15 (1) To protect the privacy of health information
16 that reveals the identity of an individual.

17 (2) To define the rights and responsibilities of
18 a person who creates or maintains individually iden-
19 tifiable health information that originates or is used
20 in the health treatment or payment process.

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

1 **TITLE I—PROTECTION OF**
2 **HEALTH INFORMATION**

3 **SEC. 101. RESTRICTIONS ON USES.**

4 (a) IN GENERAL.—Use of protected health informa-
5 tion by health information custodians—

6 (1) shall protect the reasonable expectation of
7 privacy of protected individuals; and

8 (2) shall be in accordance with fair information
9 practices.

10 (b) MINIMUM REQUIREMENTS.—

11 (1) LIMITATION ON USES.—Unless otherwise
12 authorized by a protected individual under section
13 103, a health information custodian may use pro-
14 tected health information only for the uses for which
15 disclosure is authorized under title III.

16 (2) MINIMUM AMOUNT OF INFORMATION.—A
17 health information custodian shall limit use of pro-
18 tected health information to the minimum amount
19 and duration necessary to accomplish the use.

20 **SEC. 102. RESTRICTIONS ON DISCLOSURE.**

21 (a) IN GENERAL.—Disclosure of protected health in-
22 formation by a health information custodian shall protect
23 the reasonable expectations of privacy of protected individ-
24 uals.

25 (b) MINIMUM REQUIREMENTS.—

1 (1) LIMITATION ON DISCLOSURES.—A health
2 information custodian may not disclose protected
3 health information unless—

4 (A) the disclosure is authorized by the pro-
5 tected individual under section 103; or

6 (B) the disclosure is authorized under title
7 III.

8 (2) MINIMUM AMOUNT OF INFORMATION.—A
9 health information custodian shall limit a disclosure
10 of protected health information to the minimum
11 amount of information necessary to accomplish the
12 purpose for which the information is disclosed.

13 (c) NO REQUIREMENT TO DISCLOSE.—Nothing in
14 this Act shall be construed as requiring disclosure of pro-
15 tected health information that is not otherwise required
16 to be disclosed by law.

17 **SEC. 103. STANDARDS FOR AUTHORIZATIONS FOR USE AND**
18 **DISCLOSURE.**

19 (a) IN GENERAL.—A health information custodian
20 may use or disclose protected information pursuant to an
21 authorization by a protected individual only if that author-
22 ization is based on informed consent by the protected indi-
23 vidual.

24 (b) MINIMUM REQUIREMENTS.—

1 (1) PROHIBITION ON CONDITIONING.—A health
2 information custodian may not, as a condition of
3 providing or paying for health care, require a pro-
4 tected individual to execute an authorization for use
5 or disclosure of protected health information.

6 (2) INFORMED CONSENT.—For the purposes of
7 subsection (a), an authorization shall not be consid-
8 ered to be based on informed consent unless, at a
9 minimum, it satisfies the conditions in part II.D.1 of
10 the Secretary’s HIPAA recommendations (relating
11 to “Disclosure with Patient Authorization: Author-
12 ization Content”).

13 **SEC. 104. SAFEGUARDS AGAINST MISUSE AND PROHIBITED**
14 **DISCLOSURES.**

15 (a) IN GENERAL.—Health information custodians
16 shall establish and implement safeguards against misuse
17 and prohibited disclosure of protected health information.

18 (b) MINIMUM REQUIREMENTS.—The safeguards
19 under subsection (a) shall include reasonable and appro-
20 priate administrative, technical, and physical safeguards—

21 (1) to ensure that protected health information
22 is used or disclosed only when necessary;

23 (2) to ensure the integrity and confidentiality of
24 protected health information;

1 (3) to protect against any reasonably antici-
2 pated threats or hazards to the security or integrity
3 of the information or unauthorized use or disclosure
4 of the information; and

5 (4) otherwise to ensure compliance with this
6 Act.

7 (c) MENTAL HEALTH AND OTHER ESPECIALLY SEN-
8 SITIVE INFORMATION.—In establishing and implementing
9 the safeguards under subsection (a), a health information
10 custodian shall consider providing additional protections
11 for mental health and other especially sensitive protected
12 health information, as appropriate.

13 (d) RELATIONSHIP TO SOCIAL SECURITY ACT AD-
14 MINISTRATIVE SIMPLIFICATION REQUIREMENTS.—Any
15 safeguard established under this section shall be con-
16 sistent with the standards adopted by the Secretary under
17 paragraph (1) of section 1173(d) of the Social Security
18 Act (42 U.S.C. 1320d–2(d)) and the requirement in para-
19 graph (2) of such section.

20 **TITLE II—RIGHTS OF** 21 **PROTECTED INDIVIDUALS**

22 **SEC. 201. RIGHT OF ACCESS.**

23 (a) IN GENERAL.—Protected individuals shall have
24 the right to a reasonable opportunity to inspect and copy

1 protected health information maintained by a health infor-
2 mation custodian.

3 (b) **MINIMUM REQUIREMENTS.**—Subject to section
4 405(b), a health information custodian, at a minimum,
5 shall provide a protected individual at least as much op-
6 portunity to inspect and copy protected health information
7 as was recommended by the Secretary in part II.C.2 of
8 the Secretary’s HIPAA recommendations (relating to
9 “Patient Inspection and Copying of Records”).

10 **SEC. 202. RIGHT OF CORRECTION AND AMENDMENT.**

11 (a) **IN GENERAL.**—Protected individuals shall have
12 the right to a reasonable opportunity to correct or amend
13 protected health information maintained by a health infor-
14 mation custodian.

15 (b) **MINIMUM REQUIREMENTS.**—A health informa-
16 tion custodian, at a minimum, shall provide a protected
17 individual correction and amendment protections that are
18 at least equivalent to those recommended by the Secretary
19 in part II.C.3 of the Secretary’s HIPAA recommendations
20 (relating to “Patient Correction of Records”).

21 **SEC. 203. RIGHT TO REVIEW DISCLOSURE HISTORY.**

22 (a) **IN GENERAL.**—Protected individuals shall have
23 the right to a reasonable opportunity to review a history
24 of the disclosures of protected health information about
25 the individual made by a health information custodian.

1 (b) MINIMUM REQUIREMENTS.—A health informa-
 2 tion custodian, at a minimum, shall implement procedures
 3 that ensure a protected individual at least as much oppor-
 4 tunity to review the individual’s disclosure histories as was
 5 recommended by the Secretary in part II.C.4 of the Sec-
 6 retary’s HIPAA recommendations (relating to “Disclosure
 7 History”).

8 **SEC. 204. RIGHT TO NOTICE OF INFORMATION PRACTICES**
 9 **AND OPPORTUNITY TO SEEK ADDITIONAL**
 10 **PROTECTIONS.**

11 (a) IN GENERAL.—Protected individuals shall have—

12 (1) the right to notice of the information prac-
 13 tices of health information custodians; and

14 (2) a reasonable opportunity to seek limitations
 15 on the use and disclosure of protected health infor-
 16 mation in addition to the limitations provided in
 17 such practices.

18 (b) MINIMUM REQUIREMENTS.—

19 (1) NOTICE AND OPPORTUNITY TO SEEK ADDI-
 20 TIONAL PROTECTIONS.—To the maximum extent
 21 practicable, before obtaining protected health infor-
 22 mation from a protected individual, a health infor-
 23 mation custodian—

24 (A) shall provide the protected individual
 25 with a clear and conspicuous notice of the

1 custodian’s health information practices, which
2 notice shall include, at a minimum, the expla-
3 nation recommended in part II.C.1 of the Sec-
4 retary’s HIPAA recommendations (relating to
5 “Explanation of Information Practices”);

6 (B) shall provide the protected individual a
7 reasonable opportunity to seek limitations on
8 the use or disclosure of protected health infor-
9 mation in addition to the limitations provided in
10 such practices; and

11 (C) shall obtain a signed acknowledgment
12 from the protected individual acknowledging
13 that the notice required under subparagraph
14 (A) has been provided to the protected indi-
15 vidual and the individual has been informed of
16 the opportunity to seek additional limitations
17 required to be provided under subparagraph
18 (B).

19 (2) OTHER HEALTH INFORMATION
20 CUSTODIANS.—A health information custodian who
21 receives protected health information about a pro-
22 tected individual from a source other than the indi-
23 vidual shall provide a notice of the custodian’s
24 health information practices that is consistent with
25 paragraph (1)(A) to the individual upon request.

1 (c) COMPLIANCE.—If a protected individual seeks
2 limitations on the use or disclosure of protected health in-
3 formation in addition to the limitations described in a
4 health information custodian’s notice of health informa-
5 tion practices, and the custodian agrees to provide such
6 additional limitations, the custodian shall comply with
7 such additional limitations, unless such compliance would
8 violate another provision of law.

9 **TITLE III—PERMISSIBLE DIS-**
10 **CLOSURES OF PROTECTED**
11 **HEALTH INFORMATION**

12 **SEC. 301. PROVISION OF AND PAYMENT FOR HEALTH CARE.**

13 (a) IN GENERAL.—A health information custodian,
14 to the extent the Secretary determines appropriate, may
15 disclose protected health information, without obtaining
16 an authorization under section 103, for the purpose of
17 providing health care to an individual or paying for health
18 care provided to an individual, except as provided in sub-
19 section (c).

20 (b) CONSTRUCTION.—For purposes of subsection (a),
21 a disclosure of protected health information by a health
22 information custodian for the purpose of rendering an em-
23 ployment decision, conducting a marketing activity, or
24 conducting an insurance underwriting activity, shall not
25 be considered a disclosure for the purpose of providing

1 health care to an individual or paying for health care pro-
2 vided to an individual.

3 (c) SPECIAL RULE FOR PATIENTS PAYING FOR
4 CARE.—In the case of health care provided to an indi-
5 vidual who pays for the care himself or herself, a health
6 information custodian may not disclose to a health care
7 payer, without obtaining an authorization under section
8 103, protected health information created or received in
9 the course of providing such care.

10 **SEC. 302. HEALTH OVERSIGHT.**

11 (a) IN GENERAL.—A health information custodian,
12 to the extent the Secretary determines appropriate, may
13 disclose protected health information for the purpose of
14 health oversight, without obtaining an authorization under
15 section 103.

16 (b) MINIMUM REQUIREMENTS.—The Secretary—

17 (1) shall permit a health information custodian
18 to disclose protected health information to Federal,
19 State, and local agencies (or affiliated persons of
20 such agencies) that are authorized by law to inves-
21 tigate, regulate, enforce laws relating to, or license,
22 certify, or accredit persons engaged in, the provision
23 of, or payment for, health care; and

24 (2) may permit a health information custodian
25 to disclose protected health information to appro-

1 piate private organizations engaged in licensing,
2 certification, or accreditation of health care pro-
3 viders.

4 **SEC. 303. PUBLIC HEALTH.**

5 A health information custodian, to the extent the Sec-
6 retary determines appropriate, may disclose protected
7 health information, without obtaining an authorization
8 under section 103—

9 (1) to a public health authority for use in le-
10 gally authorized disease or injury reporting, public
11 health surveillance, or a public health investigation
12 or intervention; or

13 (2) to a person who is otherwise authorized by
14 law or a public health authority to receive the infor-
15 mation for public health purposes.

16 **SEC. 304. HEALTH RESEARCH.**

17 (a) IN GENERAL.—A health information custodian,
18 to the extent the Secretary determines appropriate, may
19 disclose protected health information for health research,
20 without obtaining an authorization under section 103.

21 (b) MINIMUM REQUIREMENTS.—A health informa-
22 tion custodian may disclose protected health information
23 without such an authorization only for uses that have been
24 approved by an entity certified by the Secretary.

1 (c) REGULATIONS.—The Secretary shall promulgate
2 regulations that, at a minimum—

3 (1) require that, before approving a use of pro-
4 tected health information for purposes of subsection
5 (b), a certified entity shall determine that—

6 (A) the importance of the health research
7 outweighs the intrusion into the privacy of the
8 protected individuals who are the subjects of
9 the protected health information; and

10 (B) it would be impracticable to conduct
11 the health research without using the protected
12 health information;

13 (2) establish requirements for certifying entities
14 that ensure that such entities—

15 (A) meet the requirements for institutional
16 review boards established under section 491(a)
17 of the Public Health Service Act with respect to
18 information protection, use, and disclosure; and

19 (B) are qualified to assess and protect the
20 confidentiality of protected health information;
21 and

22 (3) require a person conducting health research
23 to remove or destroy personal identifiers at the ear-
24 liest opportunity consistent with the purpose of the
25 research, unless a certified entity has determined

1 that there is a health or research justification for re-
2 tention of identifiers and the person has an adequate
3 plan to protect the identifiers from improper use and
4 disclosure.

5 **SEC. 305. LAW ENFORCEMENT.**

6 (a) IN GENERAL.—A health information custodian
7 may disclose protected health information to a law en-
8 forcement official for a law enforcement inquiry if the law
9 enforcement official complies with the fourth amendment
10 to the Constitution.

11 (b) CONSTRUCTION.—For purposes of subsection (a),
12 all protected health information shall be treated as if it
13 were held in a home over which the protected individual
14 has exclusive authority.

15 (c) RELATIONSHIP TO HEALTH OVERSIGHT ACTIVI-
16 TIES.—This section shall not apply to a disclosure of pro-
17 tected health information for purposes of health oversight.

18 **SEC. 306. JUDICIAL OR ADMINISTRATIVE PROCEEDINGS.**

19 (a) IN GENERAL.—A health information custodian,
20 to the extent the Secretary determines appropriate, may
21 disclose protected health information, without obtaining
22 an authorization under section 103, pursuant to—

23 (1) a judicial or administrative subpoena issued
24 in a civil administrative or judicial adjudication; or

1 (2) a subpoena issued by a defendant in a
2 criminal proceeding.

3 (b) **MINIMUM REQUIREMENTS.**—A health informa-
4 tion custodian may not disclose protected health informa-
5 tion about a protected individual under this section, unless
6 the individual has had—

7 (1) reasonable notice of the subpoena; and

8 (2) a reasonable opportunity to move the court,
9 or other presiding official, to quash the subpoena on
10 the basis that the individual’s privacy interest out-
11 weighs the interest of the person seeking the infor-
12 mation.

13 **SEC. 307. OTHER DISCLOSURES.**

14 A health information custodian, to the extent the Sec-
15 retary determines appropriate, may disclose protected
16 health information, without obtaining an authorization
17 under section 103—

18 (1) where necessary to prevent or lessen a seri-
19 ous threat to the health or safety of an individual;

20 (2) to a next of kin;

21 (3) to individuals with close personal relation-
22 ships with the protected individual;

23 (4) for purposes of directory information within
24 a health care facility; and

25 (5) for State data systems.

1 **SEC. 308. REDISCLOSURES.**

2 (a) IN GENERAL.—A health information custodian
3 who receives protected health information through a dis-
4 closure under this title, to the extent the Secretary deter-
5 mines appropriate, may redisclose such information to
6 carry out the purposes for which the information was dis-
7 closed to the custodian.

8 (b) PROHIBITION.—Notwithstanding subsection (a),
9 protected health information received by a health informa-
10 tion custodian through a disclosure under this title may
11 not be disclosed to any person for use in, or be used in,
12 any administrative, civil, or criminal action or investiga-
13 tion directed against the protected individual who is the
14 subject of the information, unless—

15 (1) the action or investigation arises out of and
16 is directly related to the purpose for which the infor-
17 mation was obtained by the custodian; or

18 (2) the use or disclosure is authorized—

19 (A) by law for the protection of the public
20 health; or

21 (B) by an appropriate order of a court of
22 competent jurisdiction, granted, after a hearing
23 with notice to the health information custodian
24 and to all other affected individuals, on the
25 basis that there is—

1 (i) probable cause to believe that all
2 other possible sources for the information
3 have been exhausted; and

4 (ii) a specific and compelling public
5 interest in disclosure or use that
6 outweighs—

7 (I) the privacy interest of the
8 protected individual;

9 (II) the effect of the disclosure
10 on future provision of health care; and

11 (III) the effect of the disclosure
12 on health research and health over-
13 sight functions.

14 **TITLE IV—MISCELLANEOUS**
15 **PROVISIONS**

16 **SEC. 401. SPECIFIC CLASSES OF INDIVIDUALS.**

17 (a) MINORS.—Individuals under the age of 18 shall
18 have privacy protections regarding protected health infor-
19 mation that are at least equivalent to those recommended
20 in part II.F.4 of the Secretary’s HIPAA recommendations
21 (relating to “Minors”).

22 (b) AGENTS AND ATTORNEYS.—

23 (1) IN GENERAL.—To the extent the Secretary
24 determines appropriate, a person may exercise the
25 rights of a protected individual under this Act, if—

1 (A) the person is authorized by law (other
2 than on account of minority), or by an instru-
3 ment recognized under law, to act for the pro-
4 tected individual; or

5 (B) the protected individual is not capable
6 of exercising his or her rights under this Act
7 and there has been no formal legal arrangement
8 for others to exercise the rights.

9 (2) RELATIONSHIP TO RECOMMENDATIONS.—

10 The authority of such a person to exercise the rights
11 of a protected individual shall be equivalent to the
12 authority described in parts II.F.5 and II.F.6 of the
13 Secretary’s HIPAA recommendations (relating to
14 “Powers of Attorney” and “Patients Unable to
15 Make Choices for Themselves”).

16 (c) DECEASED PERSONS.—Deceased individuals shall
17 have privacy protections regarding protected health infor-
18 mation that are at least equivalent to those recommended
19 by the Secretary in part II.F.1 of the Secretary’s HIPAA
20 recommendations (relating to “Deceased Persons”).

21 **SEC. 402. FALSE PRETENSES.**

22 A person may not—

23 (1) obtain or disclose protected health informa-
24 tion from a health information custodian or affili-
25 ated person under false pretenses; or

1 (2) knowingly disseminate protected health in-
2 formation obtained in violation of this Act.

3 **SEC. 403. OBLIGATIONS OF AFFILIATED PERSONS.**

4 An affiliated person shall be subject to the same re-
5 quirements with respect to use and disclosure of protected
6 health information as apply to the health information cus-
7 todian with whom the affiliated person is affiliated, except
8 that an affiliated person—

9 (1) is subject to the requirements of sections
10 201 and 202 only if the affiliated person maintains
11 the individual’s protected health information and the
12 health information custodian does not maintain the
13 individual’s protected health information; and

14 (2) is subject to the requirements of section
15 203 only to the extent that the affiliated person
16 makes a disclosure.

17 **SEC. 404. PROHIBITION OF RETALIATION WITH RESPECT**
18 **TO EMPLOYMENT.**

19 A person may not subject an individual to retaliation,
20 in regard to job application procedures, the hiring, ad-
21 vancement, or discharge of employees, employee com-
22 pensation, job training, or other terms, conditions, and
23 privileges of employment, for reporting to a governmental
24 agency conditions that may constitute a violation of a re-
25 quirement under this Act.

1 **SEC. 405. MENTAL HEALTH AND OTHER ESPECIALLY SEN-**
2 **SITIVE INFORMATION.**

3 (a) **ADDITIONAL LIMITATIONS.**—Not later than 1
4 year after the date of the enactment of this Act, the
5 Secretary—

6 (1) shall consider, after consulting with physi-
7 cians and other health care providers, patients, and
8 other appropriate groups, additional limitations re-
9 lating to access to, and use and disclosure of, mental
10 health and other especially sensitive protected health
11 information; and

12 (2) shall promulgate regulations to provide any
13 such additional limitations as the Secretary deter-
14 mines to be appropriate.

15 (b) **RIGHT OF ACCESS.**—For purposes of subsection
16 (a)(2), the Secretary may limit an individual's access to
17 his or her mental health information, if the information
18 is not used by, or disclosed to, any person other than the
19 health care provider who received or created the informa-
20 tion.

21 (c) **PSYCHOTHERAPIST-PATIENT PRIVILEGE.**—Noth-
22 ing in this Act shall be construed to preempt, supersede,
23 or modify the operation of the psychotherapist-patient
24 privilege recognized by the Supreme Court in *Jaffee v.*
25 *Redmond*, 518 U.S. 1 (1996).

1 **SEC. 406. CESSATION OF OPERATIONS.**

2 Not later than 1 year after the date of the enactment
3 of this Act, the Secretary shall promulgate regulations
4 that ensure that the reasonable expectation of privacy of
5 protected individuals in protected health information is
6 maintained when health information custodians cease op-
7 erations.

8 **SEC. 407. CONFORMING AMENDMENTS TO FEDERAL PRI-**
9 **VACY ACT.**

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 custodian (as defined in
15 section 504 of the Health Information Privacy Act) shall
16 promulgate rules, in accordance with the requirements (in-
17 cluding general notice) of subsections (b)(1), (b)(2),
18 (b)(3), (c), and (e) of section 553 of this title, to exempt
19 a system of records within the agency, to the extent that
20 the system of records contains protected health informa-
21 tion (as defined in section 504 of such Act), from all provi-
22 sions of this section except subsections (e)(1), (e)(2), sub-
23 paragraphs (A) through (C) and (E) through (I) of sub-
24 section (e)(4), and subsections (e)(5), (e)(6), (e)(9),
25 (e)(12), (l), (n), (o), (p), (q), (r), and (u).”.

26 (b) REPEAL.—

1 (1) IN GENERAL.—Section 552a(f)(3) of title 5,
2 United States Code, as amended by this Act, is
3 amended by striking “pertaining to him,” and all
4 that follows through the semicolon and inserting
5 “pertaining to the individual;”.

6 (2) EFFECTIVE DATE.—The amendment made
7 by paragraph (1) shall take effect 18 months after
8 the date of the enactment of this Act.

9 **TITLE V—GENERAL PROVISIONS**

10 **SEC. 501. AUTHORITY OF THE SECRETARY.**

11 (a) REGULATIONS.—

12 (1) IN GENERAL.—Not later than 1 year after
13 the date of the enactment of this Act, the Secretary
14 shall promulgate such regulations as may be nec-
15 essary to implement this Act, including regulations
16 establishing recordkeeping or reporting require-
17 ments. Such regulations may provide greater protec-
18 tion of protected health information, or more rights
19 to protected individuals regarding such information,
20 than is provided by the minimum requirements set
21 forth in this Act.

22 (2) PROTECTIONS FOR OTHER HEALTH INFOR-
23 MATION.—The Secretary may promulgate such regu-
24 lations as may be necessary to protect the privacy of

1 individually identifiable health information that is
2 not protected health information.

3 (3) CONSULTATION.—In promulgating regula-
4 tions under this Act, the Secretary shall consult with
5 elected State and local government officials.

6 (b) RESEARCH AND DEVELOPMENT.—The Secretary
7 may sponsor or carry out research and development activi-
8 ties related to the protection of the privacy of individually
9 identifiable health information.

10 (c) PUBLIC AWARENESS AND TRAINING.—The Sec-
11 retary may sponsor or carry out activities to inform pro-
12 tected individuals of their rights under this Act or to in-
13 form other persons of their rights or responsibilities under
14 this Act. The Secretary may also sponsor or carry out
15 training to increase compliance with requirements under
16 this Act.

17 (d) OTHER AUTHORITIES.—The Secretary may hold
18 hearings, administer oaths, require the testimony or depo-
19 sition of witnesses, require the production of documents
20 or the answering of interrogatories, or enter and inspect
21 premises owned or controlled by health information
22 custodians in order to ensure compliance with this Act or
23 otherwise further the purposes of this Act.

1 **SEC. 502. ENFORCEMENT.**

2 (a) **EQUITABLE RELIEF.**—The Secretary may bring
3 an action in an appropriate court to enjoin a violation of
4 a requirement under this Act or to obtain such other equi-
5 table relief as may be appropriate under the cir-
6 cumstances.

7 (b) **CIVIL MONEY PENALTIES.**—Any person who the
8 Secretary determines has failed to comply with a require-
9 ment under this Act shall be subject, in addition to any
10 other penalties that may be prescribed by law, to a civil
11 penalty of not more than \$10,000 for each such failure.
12 The provisions of section 1128A of the Social Security Act
13 (other than subsections (a) and (b)) shall apply to the im-
14 position of a civil money penalty under this subsection in
15 the same manner as such provisions apply with respect
16 to the imposition of a penalty under section 1128A of such
17 Act.

18 (c) **CRIMINAL PENALTIES.**—

19 (1) **IN GENERAL.**—Whoever knowingly violates
20 a requirement under this Act shall be fined under
21 title 18, United States Code, imprisoned for not
22 more than 5 years, or both.

23 (2) **MONETARY GAIN.**—Whoever knowingly vio-
24 lates a requirement under this Act, with the intent
25 to sell, transfer, or use protected health information
26 obtained through the violation for profit or monetary

1 gain, shall be fined under title 18, United States
2 Code, imprisoned for not more than 10 years, or
3 both.

4 (d) CIVIL ACTIONS.—

5 (1) IN GENERAL.—

6 (A) INJUNCTION OR DAMAGES.—A pro-
7 tected individual who is adversely affected by a
8 person's violation of a requirement under this
9 Act may bring an action—

10 (i) to enjoin the violation; or

11 (ii) in the case of a knowing or neg-
12 ligent violation, to recover from the person
13 the greater of—

14 (I) the compensatory damages
15 (including nonpecuniary damages) in-
16 curred by the protected individual as
17 a result of the violation; or

18 (II) liquidated damages of
19 \$5,000 per action.

20 (B) COSTS AND ATTORNEY'S FEES.—A
21 protected individual bringing an action under
22 subparagraph (A) may recover the costs of liti-
23 gation and reasonable attorney's fees (including
24 expert fees). The United States shall be liable

1 for fees and costs under this subparagraph the
2 same as a private person.

3 (C) PUNITIVE DAMAGES.—In the case of a
4 knowing violation, the person committing the
5 violation may also be held liable for punitive
6 damages.

7 (2) TIME FOR COMMENCING ACTION.—An ac-
8 tion under this subsection shall be commenced not
9 later than 3 years after the date on which the viola-
10 tion was discovered or reasonably should have been
11 discovered.

12 **SEC. 503. RELATIONSHIP TO OTHER LAWS.**

13 (a) IN GENERAL.—

14 (1) FEDERAL, STATE, OR LOCAL LAWS.—The
15 requirements under this Act shall not preempt, su-
16 perse, or modify the operation of, any Federal,
17 State, or local law that provides—

18 (A) greater protection of protected health
19 information; or

20 (B) more rights to protected individuals re-
21 garding such information.

22 (2) PETITIONS.—

23 (A) ADVISORY DETERMINATIONS.—Any
24 person may petition the Secretary for an advi-
25 sory determination whether the operation of a

1 particular Federal, State, or local law satisfies
2 the standard in paragraph (1). Any person who
3 acts in reliance on such advisory determination
4 shall not be subject to any penalty or liability
5 under section 502, except as provided in sub-
6 paragraph (B).

7 (B) CONTRARY COURT DETERMINATION.—

8 If a Federal or State court has reached a deter-
9 mination whether the operation of a particular
10 Federal, State, or local law satisfies the stand-
11 ard in paragraph (1), a person thereafter may
12 not rely on an advisory determination under
13 subparagraph (A) to the contrary.

14 (b) SPECIFIC LAWS.—This Act shall not be construed
15 to preempt, supersede, or modify the operation of, any of
16 the following:

17 (1) Any law that provides for the reporting of
18 vital statistics such as birth or death information.

19 (2) Any law that requires the reporting of
20 abuse or neglect information about an individual or
21 other information relating to violence against an in-
22 dividual.

23 (3) Subpart II of part E of title XXVI of the
24 Public Health Service Act (relating to notifications

1 of emergency response employees of possible expo-
2 sure to infectious diseases).

3 (4) The Americans with Disabilities Act of
4 1990.

5 (5) Any law that establishes a privilege for
6 records used in health professional peer review ac-
7 tivities.

8 (6) Any law that requires the disclosure of pro-
9 tected health information, if the disclosure is per-
10 mitted under this Act.

11 (c) DEPARTMENT OF VETERANS AFFAIRS.—The lim-
12 itations on use and disclosure of protected health informa-
13 tion under this Act shall not be construed to prevent any
14 exchange of such information within and among compo-
15 nents of the Department of Veterans Affairs that deter-
16 mine eligibility for or entitlement to, or that provide, bene-
17 fits under laws administered by the Secretary of Veterans
18 Affairs.

19 (d) CONGRESS.—Nothing in this Act shall be inter-
20 preted to affect the ability of the Congress, a committee
21 of the Congress, or the Members of the Congress referred
22 to in section 2954 of title 5, United States Code, to obtain
23 such information as may be necessary for the fulfillment
24 of the Congress', the committee's, or the Members' legisla-
25 tive or oversight functions.

1 (e) PRIVILEGES.—A disclosure about a protected in-
2 dividual made under title III, or a protected individual’s
3 disclosure of protected health information for the purpose
4 of obtaining, or paying for, health care, may not be con-
5 strued as diminishing, waiving, or otherwise impairing any
6 privilege that the protected individual has in a court of
7 a State or the United States.

8 **SEC. 504. DEFINITIONS.**

9 For purposes of this Act:

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

12 (A) is not a health information custodian;

13 (B) is an agent or contractor of a health
14 information custodian; and

15 (C) pursuant to an agreement with such
16 custodian, receives, creates, uses, maintains, or
17 discloses protected health information.

18 (2) DISCLOSE.—The term “disclose”, when
19 used with respect to protected health information,
20 means to provide access to the information to a per-
21 son other than—

22 (A) the custodian or an officer or employee
23 of the custodian;

24 (B) an affiliated person of the custodian;

25 or

1 (C) a protected individual who is a subject
2 of the information.

3 (3) DISCLOSURE.—The term “disclosure”
4 means the act or an instance of disclosing.

5 (4) HEALTH CARE.—The term “health care”
6 means—

7 (A) any preventive, diagnostic, therapeutic,
8 rehabilitative, maintenance, or palliative care,
9 counseling, service, or procedure—

10 (i) with respect to the physical or
11 mental condition, or functional status, of
12 an individual; or

13 (ii) affecting the structure or function
14 of the human body or any part of the
15 human body, including banking of blood,
16 sperm, organs, or any other tissue for ad-
17 ministration to patients; or

18 (B) any sale or dispensing of a drug, de-
19 vice, equipment, or other item to an individual,
20 or for the use of an individual, pursuant to a
21 prescription.

22 (5) HEALTH CARE PAYER.—The term “health
23 care payer” means a person who pays for health
24 care in the ordinary course of business.

1 (6) HEALTH CARE PROVIDER.—The term
2 “health care provider” means a person who provides
3 health care in the ordinary course of business or
4 practice of a profession, pursuant to license, certifi-
5 cation, accreditation, or other legal authorization.

6 (7) HEALTH INFORMATION CUSTODIAN.—

7 (A) IN GENERAL.—The term “health infor-
8 mation custodian” means a health care pro-
9 vider, a health care payer, or any other person
10 who obtains protected health information as a
11 result of a disclosure authorized under this Act.

12 (B) EXCEPTIONS.—Such term does not
13 include—

14 (i) an affiliated person;

15 (ii) an individual who obtains pro-
16 tected health information under paragraph
17 (2), (3), or (4) of section 307; or

18 (iii) an individual who receives pro-
19 tected health information in a public health
20 intervention because the individual’s health
21 is at risk.

22 (8) HEALTH RESEARCH.—The term “health re-
23 search” means a biomedical, epidemiological, or
24 health services research or statistics project, or a re-
25 search project on behavioral and social factors af-

1 fecting health, that is designed to develop or con-
2 tribute to generalizable scientific or clinical knowl-
3 edge.

4 (9) LAW ENFORCEMENT INQUIRY.—The term
5 “law enforcement inquiry” means a lawful investiga-
6 tion or official proceeding inquiring into a violation
7 of, or failure to comply with, any criminal or civil
8 statute or any regulation, rule, or order issued pur-
9 suant to such a statute.

10 (10) PERSON.—The term “person” includes an
11 authority of the United States, a State, or a political
12 subdivision of a State.

13 (11) PROTECTED HEALTH INFORMATION.—The
14 term “protected health information” means any in-
15 formation, whether oral or recorded in any form or
16 medium, that—

17 (A) relates in any way to the past, present,
18 or future physical or mental health or condition
19 of a protected individual, the provision of health
20 care to an individual, or payment for the provi-
21 sion of health care to an individual;

22 (B) is received or created by a health care
23 provider in the ordinary course of business or
24 practice of a profession or by a health care

1 payer, or is obtained as a result of a disclosure
2 authorized under this Act; and

3 (C) identifies the individual, or with re-
4 spect to which there is a reasonable basis to be-
5 lieve that the information can be used to iden-
6 tify the individual.

7 (12) PROTECTED INDIVIDUAL.—The term “pro-
8 tected individual” means an individual who is the
9 subject of protected health information.

10 (13) SECRETARY.—The term “Secretary”
11 means the Secretary of Health and Human Services.

12 (14) SECRETARY’S HIPAA RECOMMENDA-
13 TIONS.—The term “Secretary’s HIPAA rec-
14 ommendations” means the recommendations of the
15 Secretary of Health and Human Services, pursuant
16 to section 264 of the Health Insurance Portability
17 and Accountability Act of 1996, entitled “Confiden-
18 tiality of Individually-Identifiable Health Informa-
19 tion” that were submitted to the Committee on
20 Commerce and the Committee on Ways and Means
21 of the House of Representatives and the Committee
22 on Labor and Human Resources and the Committee
23 on Finance of the Senate, on September 11, 1997.

24 (15) STATE.—The term “State” includes the
25 District of Columbia, Puerto Rico, the Virgin Is-

1 lands, Guam, American Samoa, and the Northern
2 Mariana Islands.

3 (16) USE.—The term “use”, when used with
4 respect to protected health information that is held
5 by a health information custodian, means—

6 (A) to use, or provide access to, the infor-
7 mation in any manner that does not constitute
8 a disclosure; or

9 (B) any act or instance of using, or pro-
10 viding access, described in subparagraph (A).

11 **SEC. 505. EFFECTIVE DATE.**

12 The requirements under this Act applicable to health
13 information custodians and affiliated persons shall take ef-
14 fect 18 months after the date of the enactment of this
15 Act.

○