

105TH CONGRESS
1ST SESSION

H. R. 2105

To amend section 552a of title 5, United States Code, to provide for the maintenance of certain health information in cases where a health care facility has closed or a health benefit plan sponsor has ceased to do business.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 1997

Mr. TOWNS introduced the following bill; which was referred to the Committee on Government Reform and Oversight

A BILL

To amend section 552a of title 5, United States Code, to provide for the maintenance of certain health information in cases where a health care facility has closed or a health benefit plan sponsor has ceased to do business.

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. MAINTENANCE OF CERTAIN PROTECTED**
4 **HEALTH INFORMATION.**

5 Section 552a of title 5, United States Code, is
6 amended by adding at the end the following:

7 “(w) MAINTENANCE OF CERTAIN HEALTH INFORMA-
8 TION UPON CESSATION OF CERTAIN BUSINESSES.—

1 “(1) IN GENERAL.—Not later than 2 years
2 after the date of the enactment of this section, a
3 State shall establish a process under which the pro-
4 tected health information described in paragraph (2)
5 that is maintained by a person described in para-
6 graph (3) is delivered to, and maintained by, the
7 State or an individual or entity designated by the
8 State.

9 “(2) INFORMATION DESCRIBED.—The protected
10 health information referred to in paragraph (1) is
11 protected health information that—

12 “(A) is recorded in any form or medium;

13 “(B) is created by—

14 “(i) a health care provider; or

15 “(ii) a health benefit plan sponsor
16 that provides benefits in the form of items
17 and services to enrollees and not in the
18 form of reimbursement for items and serv-
19 ices; and

20 “(C) relates in any way to the past,
21 present, or future physical or mental health or
22 condition or functional status of a protected in-
23 dividual or the provision of health care to a pro-
24 tected individual.

1 “(3) PERSONS DESCRIBED.—A person referred
2 to in paragraph (1) is any of the following:

3 “(A) A health care facility previously lo-
4 cated in the State that has closed.

5 “(B) A professional practice previously op-
6 erated by a health care provider in the State
7 that has closed.

8 “(C) A health benefit plan sponsor that—

9 “(i) previously provided benefits in the
10 form of items and services to enrollees in
11 the State; and

12 “(ii) has ceased to do business.

13 “(4) INELIGIBILITY OF NONCOMPLYING STATES
14 FOR CONTRACTOR STATUS FOR PURPOSES OF FED-
15 ERAL CIVILIAN PROCUREMENT.—A State that fails
16 to comply with paragraph (1) may not be considered
17 to be a responsible source (as such term is defined
18 in section 4 of the Office of Federal Procurement
19 Policy Act) for purposes of any contract to which
20 the Federal Property and Administrative Services
21 Act of 1949 applies. For purposes of the preceding
22 sentence, the Secretary of Health and Human Serv-
23 ices shall make timely recommendations to each ex-
24 ecutive agency (as such term is defined in section 3
25 of the Federal Property and Administrative Services

1 Act of 1949) concerning whether States are comply-
2 ing with paragraph (1).

3 “(5) DEFINITIONS.—For purposes of this sub-
4 section:

5 “(A) HEALTH BENEFIT PLAN.—The term
6 ‘health benefit plan’ means—

7 “(i) any contract of health insurance,
8 including any hospital or medical service
9 policy or certificate, hospital or medical
10 service plan contract, or health mainte-
11 nance organization group contract, that is
12 provided by a carrier; and

13 “(ii) an employee welfare benefit plan
14 or other arrangement insofar as the plan
15 or arrangement provides health benefits
16 and is funded in a manner other than
17 through the purchase of one or more poli-
18 cies or contracts described in clause (i).

19 “(B) HEALTH BENEFIT PLAN SPONSOR.—
20 The term ‘health benefit plan sponsor’ means a
21 person who, with respect to a specific item of
22 protected health information, receives or creates
23 the information while acting in whole or in part
24 in the capacity of—

1 “(i) an insurance carrier or other per-
2 son providing a health benefit plan, includ-
3 ing any public entity that provides pay-
4 ments for health care items and services
5 under a health benefit plan that are equiv-
6 alent to payments provided by a private
7 person under such a plan; or

8 “(ii) an officer or employee of a per-
9 son described in clause (i).

10 “(C) HEALTH CARE.—The term ‘health
11 care’—

12 “(i) means—

13 “(I) any preventive, diagnostic,
14 therapeutic, rehabilitative, mainte-
15 nance, or palliative care, counseling,
16 service, or procedure—

17 “(aa) with respect to the
18 physical or mental condition, or
19 functional status, of an individ-
20 ual; or

21 “(bb) affecting the structure
22 or function of the human body or
23 any part of the human body, in-
24 cluding banking of blood, sperm,
25 organs, or any other tissue; or

1 “(cc) any sale or dispensing
2 of a drug, device, equipment, or
3 other item to an individual, or for
4 the use of an individual, pursu-
5 ant to a prescription; but

6 “(ii) does not include any item or
7 service that is not furnished for the pur-
8 pose of maintaining or improving the
9 health of an individual.

10 “(D) HEALTH CARE PROVIDER.—The term
11 ‘health care provider’ means a person who, with
12 respect to a specific item of protected health in-
13 formation, receives or creates the information
14 while acting in whole or in part in the capacity
15 of—

16 “(i) a person who is licensed, certified,
17 registered, or otherwise authorized by law
18 to provide an item or service that con-
19 stitutes health care in the ordinary course
20 of business or practice of a profession;

21 “(ii) a Federal or State program that
22 directly provides items or services that con-
23 stitute health care to beneficiaries; or

24 “(iii) an officer or employee of a per-
25 son described in clause (i) or (ii).

1 “(E) HEALTH OVERSIGHT AGENCY.—The
2 term ‘health oversight agency’ means a person
3 who, with respect to a specific item of protected
4 health information, receives or creates the infor-
5 mation while acting in whole or in part in the
6 capacity of—

7 “(i) a person who performs or over-
8 sees the performance of an assessment,
9 evaluation, determination, or investigation
10 relating to the licensing, accreditation, or
11 certification of health care providers;

12 “(ii) a person who—

13 “(I) performs or oversees the
14 performance of an audit, assessment,
15 evaluation, determination, or inves-
16 tigation relating to the effectiveness
17 of, compliance with, or applicability
18 of, legal, fiscal, medical, or scientific
19 standards or aspects of performance
20 related to the delivery of, or payment
21 for, health care; and

22 “(II) is a public agency, acting
23 on behalf of a public agency, acting
24 pursuant to a requirement of a public
25 agency, or carrying out activities

1 under a State or Federal statute regu-
2 lating the assessment, evaluation, de-
3 termination, or investigation; or

4 “(III) an officer or employee of a
5 person described in subclause (I) or
6 (II).

7 “(F) HEALTH RESEARCHER.—The term
8 ‘health researcher’ means a person who, with
9 respect to a specific item of protected health in-
10 formation, receives or creates the information
11 while acting in whole or in part in the capacity
12 of—

13 “(i) a person conducting a biomedical,
14 epidemiological, or health services research
15 or statistics project, or a research project
16 on behavioral and social factors affecting
17 health; or

18 “(ii) an officer or employee of a per-
19 son described in clause (i).

20 “(G) PERSON.—The term ‘person’ includes
21 an authority of the United States, a State, or
22 a political subdivision of a State.

23 “(H) PROTECTED HEALTH INFORMA-
24 TION.—The term ‘protected health information’

1 means any information, whether oral or re-
2 corded in any form or medium—

3 “(i) that is created or received in a
4 State by—

5 “(I) a health care provider;

6 “(II) a health benefit plan spon-
7 sor;

8 “(III) a health oversight agency;

9 or

10 “(IV) a public health authority;

11 “(ii) that relates in any way to the
12 past, present, or future physical or mental
13 health or condition or functional status of
14 a protected individual, the provision of
15 health care to a protected individual, or
16 payment for the provision of health care to
17 a protected individual; and

18 “(iii) that—

19 “(I) identifies the individual; or

20 “(II) with respect to which there
21 is a reasonable basis to believe that
22 the information can be used to iden-
23 tify the individual.

1 “(I) PROTECTED INDIVIDUAL.—The term
2 ‘protected individual’ means an individual who,
3 with respect to a date—

4 “(i) is living on the date; or

5 “(ii) has died within the 2-year period
6 ending on the date.

7 “(J) PUBLIC HEALTH AUTHORITY.—The
8 term ‘public health authority’ means a person
9 who, with respect to a specific item of protected
10 health information, receives or creates the infor-
11 mation while acting in whole or in part in the
12 capacity of—

13 “(i) an authority of the United States,
14 a State, or a political subdivision of a
15 State that is responsible for public health
16 matters;

17 “(ii) a person acting under the direc-
18 tion of such an authority; or

19 “(iii) an officer or employee of a per-
20 son described in clause (i) or (ii).

21 “(K) STATE.—The term “State” includes
22 the District of Columbia, Puerto Rico, the Vir-
23 gin Islands, Guam, American Samoa, and the
24 Northern Mariana Islands.”.

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