

105TH CONGRESS  
1ST SESSION

# H. R. 52

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

JANUARY 7, 1997

Mr. CONDIT introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Government Reform and Oversight, and the Judiciary, 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

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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 1997”.

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 HEALTH INFORMATION PRACTICES

### Subtitle A—Duties of Health Information Trustees

- Sec. 101. Inspection of protected health information.
- Sec. 102. Amendment of protected health information.
- Sec. 103. Notice of information practices.
- Sec. 104. Disclosure history.
- Sec. 105. Security.

### Subtitle B—Use and Disclosure of Protected Health Information

- Sec. 111. General limitations on use and disclosure.
- Sec. 112. Authorizations for disclosure of protected health information.
- Sec. 113. Treatment, payment, and oversight.
- Sec. 114. Next of kin and directory information.
- Sec. 115. Public health.
- Sec. 116. Health research.
- Sec. 117. Emergency circumstances.
- Sec. 118. Judicial and administrative purposes.
- Sec. 119. Law enforcement.
- Sec. 120. Subpoenas, warrants, and search warrants.

### Subtitle C—Access Procedures and Challenge Rights

- Sec. 131. Access procedures for law enforcement subpoenas, warrants, and search warrants.
- Sec. 132. Challenge procedures for law enforcement subpoenas.
- Sec. 133. Access and challenge procedures for other subpoenas.
- Sec. 134. Construction of subtitle; suspension of statute of limitations.
- Sec. 135. Responsibilities of Secretary.

### Subtitle D—Miscellaneous Provisions

- Sec. 141. Payment card and electronic payment transactions.
- Sec. 142. Access to protected health information outside of the United States.
- Sec. 143. Standards for electronic documents and communications.
- Sec. 144. Duties and authorities of affiliated persons.
- Sec. 145. Agents and attorneys.
- Sec. 146. Minors.
- Sec. 147. Maintenance of certain protected health information.

### Subtitle E—Enforcement

- Sec. 151. Civil actions.
- Sec. 152. Civil money penalties.
- Sec. 153. Alternative dispute resolution.
- Sec. 154. 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, RESEARCH, AND EDUCATION; EFFECTIVE DATES; APPLICABILITY; AND RELATIONSHIP TO OTHER LAWS

Sec. 301. Regulations; research and education.  
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  
21 health care providers and payors create a compelling  
22 need for uniform Federal law, rules, and procedures

1 governing the use, maintenance, and disclosure of  
2 health information.

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

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

15 (b) PURPOSES.—The purposes of this Act are as  
16 follows:

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

21 (2) To define the rights and responsibilities of  
22 a person who creates or maintains individually iden-  
23 tifiable health information that originates or is used  
24 in the health treatment or payment process.

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

3 **SEC. 3. DEFINITIONS.**

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

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

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

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

15                   (C) a protected individual who is a subject  
16                   of the information.

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

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

23                   (A) that is created or received in a State  
24                   by—

25                           (i) a health care provider;

1 (ii) a health benefit plan sponsor;

2 (iii) a health oversight agency; or

3 (iv) a public health authority;

4 (B) that relates in any way to the past,  
5 present, or future physical or mental health or  
6 condition or functional status of a protected in-  
7 dividual, the provision of health care to a pro-  
8 tected individual, or payment for the provision  
9 of health care to a protected individual; and

10 (C) that—

11 (i) identifies the individual; or

12 (ii) with respect to which there is a  
13 reasonable basis to believe that the infor-  
14 mation can be used to identify the individ-  
15 ual.

16 (4) PROTECTED INDIVIDUAL.—The term “pro-  
17 tected individual” means an individual who, with re-  
18 spect to a date—

19 (A) is living on the date; or

20 (B) has died within the 2-year period end-  
21 ing on the date.

22 (5) USE.—The term “use”, when used with re-  
23 spect to protected health information that is held by  
24 a health information trustee, means—

1 (A) to use, or provide access to, the infor-  
2 mation in any manner that does not constitute  
3 a disclosure; or

4 (B) any act or instance of using, or provid-  
5 ing access, described in subparagraph (A).

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

8 (1) CARRIER.—The term “carrier” means a li-  
9 censed insurance company, a hospital or medical  
10 service corporation (including an existing Blue Cross  
11 or Blue Shield organization, within the meaning of  
12 section 833(c)(2) of the Internal Revenue Code of  
13 1986), a health maintenance organization, or other  
14 entity licensed or certified by a State to provide  
15 health insurance or health benefits.

16 (2) HEALTH BENEFIT PLAN.—The term  
17 “health benefit plan” means—

18 (A) any contract of health insurance, in-  
19 cluding any hospital or medical service policy or  
20 certificate, hospital or medical service plan con-  
21 tract, or health maintenance organization group  
22 contract, that is provided by a carrier; and

1 (B) an employee welfare benefit plan or  
2 other arrangement insofar as the plan or ar-  
3 rangement provides health benefits and is fund-  
4 ed in a manner other than through the pur-  
5 chase of one or more policies or contracts de-  
6 scribed in subparagraph (A).

7 (3) HEALTH BENEFIT PLAN SPONSOR.—The  
8 term “health benefit plan sponsor” means a person  
9 who, with respect to a specific item of protected  
10 health information, receives, creates, uses, main-  
11 tains, or discloses the information while acting in  
12 whole or in part in the capacity of—

13 (A) a carrier or other person providing a  
14 health benefit plan, including any public entity  
15 that provides payments for health care items  
16 and services under a health benefit plan that  
17 are equivalent to payments provided by a pri-  
18 vate person under such a plan; or

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

21 (4) HEALTH CARE PROVIDER.—The term  
22 “health care provider” means a person who, with re-  
23 spect to a specific item of protected health informa-  
24 tion, receives, creates, uses, maintains, or discloses



1 the information while acting in whole or in part in  
2 the capacity of—

3 (A) a person who is licensed, certified, reg-  
4 istered, or otherwise authorized by law to pro-  
5 vide an item or service that constitutes health  
6 care in the ordinary course of business or prac-  
7 tice of a profession;

8 (B) a Federal or State program that di-  
9 rectly provides items or services that constitute  
10 health care to beneficiaries; or

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

13 (5) HEALTH INFORMATION TRUSTEE.—The  
14 term “health information trustee” means—

15 (A) a health care provider;

16 (B) a health oversight agency;

17 (C) a health benefit plan sponsor;

18 (D) a public health authority;

19 (E) a health researcher; or

20 (F) a person who, with respect to a spe-  
21 cific item of protected health information, is not  
22 described in subparagraphs (A) through (E) but  
23 receives the information—

24 (i) pursuant to—

1 (I) section 117 (relating to emer-  
2 gency circumstances);

3 (II) section 118 (relating to judi-  
4 cial and administrative purposes);

5 (III) section 119 (relating to law  
6 enforcement); or

7 (IV) section 120 (relating to sub-  
8 poenas, warrants, and search war-  
9 rants); or

10 (ii) while acting in whole or in part in  
11 the capacity of an officer or employee of a  
12 person described in clause (i).

13 (6) HEALTH OVERSIGHT AGENCY.—The term  
14 “health oversight agency” means a person who, with  
15 respect to a specific item of protected health infor-  
16 mation, receives, creates, uses, maintains, or dis-  
17 closes the information while acting in whole or in  
18 part in the capacity of—

19 (A) a person who performs or oversees the  
20 performance of an assessment, evaluation, de-  
21 termination, or investigation relating to the li-  
22 censing, accreditation, or certification of health  
23 care providers;

24 (B) a person who—

1 (i) performs or oversees the perform-  
2 ance of an audit, assessment, evaluation,  
3 determination, or investigation relating to  
4 the effectiveness of, compliance with, or  
5 applicability of, legal, fiscal, medical, or  
6 scientific standards or aspects of perform-  
7 ance related to the delivery of, or payment  
8 for, health care; 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 assessment, evalua-  
14 tion, determination, or investigation; or

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

17 (7) HEALTH RESEARCHER.—The term “health  
18 researcher” means a person who, with respect to a  
19 specific item of protected health information, re-  
20 ceives the information—

21 (A) pursuant to section 116 (relating to  
22 health research); or

23 (B) while acting in whole or in part in the  
24 capacity of an officer or employee of a person  
25 described in subparagraph (A).

1           (8) PUBLIC HEALTH AUTHORITY.—The term  
2       “public health authority” means a person who, with  
3       respect to a specific item of protected health infor-  
4       mation, receives, creates, uses, maintains, or dis-  
5       closes the information while acting in whole or in  
6       part in the capacity of—

7           (A) an authority of the United States, a  
8       State, or a political subdivision of a State that  
9       is responsible for public health matters;

10          (B) a person acting under the direction of  
11       such an authority; or

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

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

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

17           (A) is not a health information trustee;

18           (B) is a contractor, subcontractor, associ-  
19       ate, or subsidiary of a person who is a health  
20       information trustee; and

21           (C) pursuant to an agreement or other re-  
22       lationship with such trustee, receives, creates,  
23       uses, maintains, or discloses protected health  
24       information.

1 (2) APPROVED HEALTH RESEARCH PROJECT.—

2 The term “approved health research project” means  
3 a biomedical, epidemiological, or health services re-  
4 search or statistics project, or a research project on  
5 behavioral and social factors affecting health, that  
6 has been approved by a certified institutional review  
7 board.

8 (3) CERTIFIED INSTITUTIONAL REVIEW  
9 BOARD.—The term “certified institutional review  
10 board” means a board—

11 (A) established by an entity to review re-  
12 search involving protected health information  
13 and the rights of protected individuals con-  
14 ducted at or supported by the entity;

15 (B) established in accordance with regula-  
16 tions of the Secretary under section 116(d)(1);  
17 and

18 (C) certified by the Secretary under section  
19 116(d)(2).

20 (4) HEALTH CARE.—The term “health care”—

21 (A) means—

22 (i) any preventive, diagnostic, thera-  
23 peutic, rehabilitative, maintenance, or pal-  
24 liative care, counseling, service, or proce-  
25 dure—

1 (I) with respect to the physical or  
2 mental condition, or functional status,  
3 of an individual; or

4 (II) affecting the structure or  
5 function of the human body or any  
6 part of the human body, including  
7 banking of blood, sperm, organs, or  
8 any other tissue; or

9 (ii) any sale or dispensing of a drug,  
10 device, equipment, or other item to an indi-  
11 vidual, or for the use of an individual, pur-  
12 suant to a prescription; but

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

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

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

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

3 (8) STATE.—The term “State” includes the  
4 District of Columbia, Puerto Rico, the Virgin Is-  
5 lands, Guam, American Samoa, and the Northern  
6 Mariana Islands.

7 **TITLE I—FAIR HEALTH**  
8 **INFORMATION PRACTICES**  
9 **Subtitle A—Duties of Health**  
10 **Information Trustees**

11 **SEC. 101. INSPECTION OF PROTECTED HEALTH INFORMA-**  
12 **TION.**

13 (a) IN GENERAL.—Except as provided in subsection  
14 (b), a health information trustee described in subsection  
15 (g)—

16 (1) shall permit a protected individual to in-  
17 spect any protected health information about the in-  
18 dividual that the trustee maintains, any record with  
19 respect to such information required under section  
20 104, and any copy of an authorization required  
21 under section 112 that pertains to such information;

22 (2) shall provide the protected individual with a  
23 copy of the information, upon request by the individ-  
24 ual and subject to any conditions imposed by the  
25 trustee under subsection (d), in any form or format

1 requested by the individual, if the information is  
2 readily reproducible by the trustee in such form or  
3 format;

4 (3) shall permit a person who has been des-  
5 ignated in writing by the protected individual to in-  
6 spect the information on behalf of the individual or  
7 to accompany the individual during the inspection;  
8 and

9 (4) may offer to explain or interpret informa-  
10 tion that is inspected or copied under this sub-  
11 section.

12 (b) EXCEPTIONS.—A health information trustee is  
13 not required by this section to permit inspection or copy-  
14 ing of protected health information by a protected individ-  
15 ual if any of the following conditions apply:

16 (1) INFORMATION ABOUT OTHERS.—The infor-  
17 mation relates to an individual, other than the pro-  
18 tected individual or a health care provider, and the  
19 trustee determines in the exercise of reasonable pro-  
20 fessional judgment that inspection or copying of the  
21 information would cause sufficient harm to one or  
22 both of the individuals so as to outweigh the desir-  
23 ability of permitting access.



1           (2) ENDANGERMENT TO LIFE OR SAFETY.—In-  
2           spection or copying of the information could reason-  
3           ably be expected to endanger the life or physical  
4           safety of an individual.

5           (3) CONFIDENTIAL SOURCE.—The information  
6           identifies or could reasonably lead to the identifica-  
7           tion of an individual (other than a health care pro-  
8           vider) who provided information under a promise of  
9           confidentiality to a health care provider concerning  
10          a protected individual who is a subject of the infor-  
11          mation.

12          (4) ADMINISTRATIVE PURPOSES.—The informa-  
13          tion—

14                (A) is used by the trustee solely for admin-  
15                istrative purposes and not in the provision of  
16                health care to a protected individual who is a  
17                subject of the information; and

18                (B) is not disclosed by the trustee to any  
19                person.

20          (5) DUPLICATIVE INFORMATION.—The informa-  
21          tion duplicates information available for inspection  
22          under subsection (a).

23          (6) INFORMATION COMPILED IN ANTICIPATION  
24          OF LITIGATION.—The information is compiled prin-  
25          cipally—

1 (A) in anticipation of a civil, criminal, or  
2 administrative action or proceeding; or

3 (B) for use in such an action or proceed-  
4 ing.

5 (c) INSPECTION AND COPYING OF SEGREGABLE POR-  
6 TION.—A health information trustee shall permit inspec-  
7 tion and copying under subsection (a) of any reasonably  
8 segregable portion of a record after deletion of any portion  
9 that is exempt under subsection (b).

10 (d) CONDITIONS.—A health information trustee  
11 may—

12 (1) require a written request for the inspection  
13 and copying of protected health information under  
14 this section; and

15 (2) charge a reasonable cost-based fee for—

16 (A) permitting inspection of information  
17 under this section; and

18 (B) providing a copy of protected health  
19 information under this section.

20 (e) STATEMENT OF REASONS FOR DENIAL.—If a  
21 health information trustee denies in whole or in part a  
22 request for inspection or copying under this section, the  
23 trustee shall provide the protected individual who made  
24 the request with a written statement of the reasons for  
25 the denial.

1 (f) DEADLINE.—A health information trustee shall  
 2 comply with or deny a request for inspection or copying  
 3 of protected health information under this section within  
 4 the 30-day period beginning on the date the trustee re-  
 5 ceives the request.

6 (g) APPLICABILITY.—This section applies to a health  
 7 information trustee who is—

- 8 (1) a health benefit plan sponsor;
- 9 (2) a health care provider;
- 10 (3) a health oversight agency; or
- 11 (4) a public health authority.

12 **SEC. 102. AMENDMENT OF PROTECTED HEALTH INFORMA-**  
 13 **TION.**

14 (a) IN GENERAL.—A health information trustee de-  
 15 scribed in subsection (f) shall, within the 45-day period  
 16 beginning on the date the trustee receives from a protected  
 17 individual about whom the trustee maintains protected  
 18 health information a written request that the trustee cor-  
 19 rect or amend the information, complete the duties de-  
 20 scribed in one of the following paragraphs:

- 21 (1) CORRECTION OR AMENDMENT AND NOTIFI-
- 22 CATION.—The trustee shall—
- 23 (A) make the correction or amendment re-
- 24 quested;

1 (B) inform the protected individual of the  
2 amendment or correction that has been made;

3 (C) make reasonable efforts to inform any  
4 person who is identified by the protected indi-  
5 vidual, who is not an employee of the trustee,  
6 and to whom the uncorrected or unamended  
7 portion of the information was previously dis-  
8 closed of the correction or amendment that has  
9 been made; and

10 (D) at the request of the individual, make  
11 reasonable efforts to inform any known source  
12 of the uncorrected or unamended portion of the  
13 information about the correction or amendment  
14 that has been made.

15 (2) REASONS FOR REFUSAL AND REVIEW PRO-  
16 CEDURES.—The trustee shall inform the protected  
17 individual of—

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

20 (B) any procedures for further review of  
21 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) STANDARDS FOR CORRECTION OR AMEND-  
7 MENT.—A trustee shall correct or amend protected health  
8 information in accordance with a request made under sub-  
9 section (a) if the trustee determines that the information  
10 is not accurate, relevant, timely, or complete for the pur-  
11 poses for which the information may be used or disclosed  
12 by the trustee.

13 (c) STATEMENT OF DISAGREEMENT.—After a pro-  
14 tected individual has filed a statement of disagreement  
15 under subsection (a)(2)(C), the trustee, in any subsequent  
16 disclosure of the disputed portion of the information, shall  
17 include a copy of the individual's statement and may in-  
18 clude a concise statement of the trustee's reasons for not  
19 making the requested correction or amendment.

20 (d) CONSTRUCTION.—This section may not be con-  
21 strued to require a health information trustee to conduct  
22 a hearing or proceeding concerning a request for a correc-  
23 tion or amendment to protected health information the  
24 trustee maintains.

1 (e) CORRECTION.—For purposes of subsection (a), a  
2 correction is deemed to have been made to protected  
3 health information when—

4 (1) information that is not timely, accurate, rel-  
5 evant, or complete is clearly marked as incorrect; or

6 (2) supplementary correct information is made  
7 part of the information and adequately cross-ref-  
8 erenced.

9 (f) APPLICABILITY.—This section applies to a health  
10 information trustee who is—

11 (1) a health benefit plan sponsor;

12 (2) a health care provider;

13 (3) a health oversight agency; or

14 (4) a public health authority.

15 **SEC. 103. NOTICE OF INFORMATION PRACTICES.**

16 (a) PREPARATION OF NOTICE.—A health information  
17 trustee described in subsection (d) shall prepare a written  
18 notice of information practices describing the following:

19 (1) The rights under this Act of a protected in-  
20 dividual who is the subject of protected health infor-  
21 mation, including the right to inspect and copy such  
22 information and the right to seek amendments to  
23 such information, and the procedures for authorizing  
24 disclosures of protected health information and for  
25 revoking such authorizations.

1           (2) The procedures established by the trustee  
2           for the exercise of such rights.

3           (3) The uses and disclosures of protected health  
4           information that are authorized under this Act.

5           (b) DISSEMINATION OF NOTICE.—A health informa-  
6           tion trustee—

7           (1) shall, upon request, provide any person with  
8           a copy of the trustee’s notice of information prac-  
9           tices (described in subsection (a)); and

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

13          (c) MODEL NOTICES.—Not later than July 1, 1999,  
14          the Secretary, after notice and opportunity for public com-  
15          ment, shall develop and disseminate model notices of infor-  
16          mation practices for use by health information trustees  
17          under this section.

18          (d) APPLICABILITY.—This section applies to a health  
19          information trustee who is—

20               (1) a health benefit plan sponsor;

21               (2) a health care provider; or

22               (3) a health oversight agency.

23   **SEC. 104. DISCLOSURE HISTORY.**

24          (a) IN GENERAL.—Except as provided in subsection

25          (b) and section 114, each health information trustee shall

1 create and maintain, with respect to any protected health  
2 information the trustee discloses, a record of—

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

4 (2) the name of the person to whom the disclo-  
5 sure was made;

6 (3) the address of the person to whom the dis-  
7 closure was made or the location to which the disclo-  
8 sure was made; and

9 (4) where practicable, a description of the infor-  
10 mation disclosed.

11 (b) REGULATIONS.—Not later than July 1, 1999, the  
12 Secretary shall promulgate regulations that exempt a  
13 health information trustee from maintaining a record  
14 under subsection (a) with respect protected health infor-  
15 mation disclosed by the trustee for purposes of peer re-  
16 view, licensing, certification, accreditation, and similar ac-  
17 tivities.

18 **SEC. 105. SECURITY.**

19 (a) IN GENERAL.—Each health information trustee  
20 who receives or creates protected health information that  
21 is subject to this Act shall maintain reasonable and appro-  
22 priate administrative, technical, and physical safeguards—

23 (1) to ensure the integrity and confidentiality of  
24 the information;



1           (2) to protect against any reasonably antici-  
2       pated—

3                   (A) threats or hazards to the security or  
4       integrity of the information; and

5                   (B) unauthorized uses or disclosures of the  
6       information; and

7           (3) otherwise ensure compliance with this Act  
8       by the trustee and the officers and employees of the  
9       trustee.

10       (b) GUIDELINES.—Not later than July 1, 1999, the  
11   Secretary, after notice and opportunity for public com-  
12   ment, shall develop and disseminate guidelines for the im-  
13   plementation of this section. The guidelines shall take into  
14   account—

15                   (1) the technical capabilities of record systems  
16       used to maintain protected health information;

17                   (2) the costs of security measures;

18                   (3) the need for training persons who have ac-  
19       cess to protected health information; and

20                   (4) the value of audit trails in computerized  
21       record systems.

1     **Subtitle B—Use and Disclosure of**  
2     **Protected Health Information**

3     **SEC. 111. GENERAL LIMITATIONS ON USE AND DISCLO-**  
4     **SURE.**

5         (a) USE.—Except as otherwise provided under this  
6     Act, a health information trustee may use protected health  
7     information only for a purpose—

8             (1) that is compatible with and directly related  
9     to the purpose for which the information—

10                 (A) was collected; or

11                 (B) was received by the trustee; or

12             (2) for which the trustee is authorized to dis-  
13     close the information under this Act.

14         (b) DISCLOSURE.—A health information trustee may  
15     disclose protected health information only as authorized  
16     under this Act.

17         (c) SCOPE OF USES AND DISCLOSURES.—

18             (1) IN GENERAL.—A use or disclosure of pro-  
19     tected health information by a health information  
20     trustee shall be limited, when practicable, to the  
21     minimum amount of information necessary to ac-  
22     complish the purpose for which the information is  
23     used or disclosed.

1           (2) GUIDELINES.—Not later than July 1, 1999,  
2       the Secretary, after notice and opportunity for pub-  
3       lic comment, shall issue guidelines to implement  
4       paragraph (1), which shall take into account the  
5       technical capabilities of the record systems used to  
6       maintain protected health information and the costs  
7       of limiting use and disclosure.

8       (d) IDENTIFICATION OF DISCLOSED INFORMATION  
9       AS PROTECTED INFORMATION.—Except with respect to  
10      protected health information that is disclosed under sec-  
11      tion 114 (relating to next of kin and directory informa-  
12      tion), a health information trustee may disclose protected  
13      health information only if the recipient has been notified  
14      that the information is protected health information that  
15      is subject to this Act.

16      (e) AGREEMENT TO LIMIT USE OR DISCLOSURE.—  
17      A health information trustee who receives protected health  
18      information from any person pursuant to a written agree-  
19      ment to restrict use or disclosure of the information to  
20      a greater extent than otherwise would be required under  
21      this Act shall comply with the terms of the agreement,  
22      except where use or disclosure of the information in viola-  
23      tion of the agreement is required by law. A trustee who  
24      fails to comply with the preceding sentence shall be subject

1 to section 151 (relating to civil actions) with respect to  
2 such failure.

3 (f) NO GENERAL REQUIREMENT TO DISCLOSE.—  
4 Nothing in this Act shall be construed to require a health  
5 information trustee to disclose protected health informa-  
6 tion not otherwise required to be disclosed by law.

7 **SEC. 112. AUTHORIZATIONS FOR DISCLOSURE OF PRO-**  
8 **TECTED HEALTH INFORMATION.**

9 (a) WRITTEN AUTHORIZATIONS.—A health informa-  
10 tion trustee may disclose protected health information  
11 pursuant to an authorization executed by the protected in-  
12 dividual who is the subject of the information, if each of  
13 the following requirements is satisfied:

14 (1) WRITING.—The authorization is in writing,  
15 signed by the individual, and dated on the date of  
16 such signature.

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

20 (3) TRUSTEE DESCRIBED.—The trustee is spe-  
21 cifically named or generically described in the au-  
22 thorization as authorized to disclose such informa-  
23 tion.

1           (4) RECIPIENT DESCRIBED.—The person to  
2       whom the information is to be disclosed is specifi-  
3       cally named or generically described in the author-  
4       ization as a person to whom such information may  
5       be disclosed.

6           (5) STATEMENT OF INTENDED USES AND DIS-  
7       CLOSURES RECEIVED.—The authorization contains  
8       an acknowledgment that the individual has received  
9       a statement described in subsection (b) from such  
10      person.

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

13          (7) AUTHORIZATION TIMELY RECEIVED.—The  
14      authorization is received by the trustee during a pe-  
15      riod described in subsection (c)(1).

16          (8) DISCLOSURE TIMELY MADE.—The disclo-  
17      sure occurs during a period described in subsection  
18      (c)(2).

19      (b) STATEMENT OF INTENDED USES AND DISCLO-  
20      SURES.—

21          (1) IN GENERAL.—A person who wishes to re-  
22      ceive from a health information trustee protected  
23      health information about a protected individual pur-  
24      suant to an authorization executed by the individual  
25      shall supply the individual, in writing and on a form

1       that is distinct from the authorization, with a state-  
 2       ment of the uses for which the person intends the  
 3       information and the disclosures the person intends  
 4       to make of the information. Such statement shall be  
 5       supplied before the authorization is executed.

6           (2) ENFORCEMENT.—If the person uses or dis-  
 7       closes the information in a manner that is inconsis-  
 8       tent with such statement, the person shall be subject  
 9       to section 151 (relating to civil actions) with respect  
 10      to such failure, except where such use or disclosure  
 11      is required by law.

12          (3) MODEL STATEMENTS.—Not later than July  
 13      1, 1999, the Secretary, after notice and opportunity  
 14      for public comment, shall develop and disseminate  
 15      model statements of intended uses and disclosures of  
 16      the type described in paragraph (1).

17      (c) TIME LIMITATIONS ON AUTHORIZATIONS.—

18          (1) RECEIPT BY TRUSTEE.—For purposes of  
 19      subsection (a)(7), an authorization is timely received  
 20      if it is received by the trustee during—

21           (A) the 1-year period beginning on the  
 22           date that the authorization is signed under sub-  
 23           section (a)(1), if the authorization permits the  
 24           disclosure of protected health information to—

25                   (i) a health benefit plan sponsor;

- 1 (ii) a health care provider;
- 2 (iii) a health oversight agency;
- 3 (iv) a public health authority;
- 4 (v) a health researcher; or
- 5 (vi) a person who provides counseling
- 6 or social services to individuals; or

7 (B) the 30-day period beginning on the  
8 date that the authorization is signed under sub-  
9 section (a)(1), if the authorization permits the  
10 disclosure of protected health information to a  
11 person other than a person described in sub-  
12 paragraph (A).

13 (2) DISCLOSURE BY TRUSTEE.—For purposes  
14 of subsection (a)(8), a disclosure is timely made if  
15 it occurs before—

16 (A) the date or event (if any) specified in  
17 the authorization upon which the authorization  
18 expires; and

19 (B) the expiration of the 6-month period  
20 beginning on the date the trustee receives the  
21 authorization.

22 (d) REVOCATION OR AMENDMENT OF AUTHORIZA-  
23 TION.—

1           (1) IN GENERAL.—A protected individual in  
2       writing may revoke or amend an authorization de-  
3       scribed in subsection (a), in whole or in part, at any  
4       time, except insofar as—

5           (A) disclosure of protected health informa-  
6       tion has been authorized to permit validation of  
7       expenditures based on health condition by a  
8       government authority; or

9           (B) action has been taken in reliance on  
10      the authorization.

11          (2) NOTICE OF REVOCATION.—A health infor-  
12      mation trustee who discloses protected health infor-  
13      mation in reliance on an authorization that has been  
14      revoked shall not be subject to any liability or pen-  
15      alty under this Act if—

16           (A) the reliance was in good faith;

17           (B) the trustee had no notice of the rev-  
18      ocation; and

19           (C) the disclosure was otherwise in accord-  
20      ance with the requirements of this section.

21          (e) ADDITIONAL REQUIREMENTS OF TRUSTEE.—A  
22      health information trustee may impose requirements for  
23      an authorization that are in addition to the requirements  
24      in this section.



1       (f) COPY.—A health information trustee who dis-  
2 closes protected health information pursuant to an author-  
3 ization under this section shall maintain a copy of the au-  
4 thorization.

5       (g) CONSTRUCTION.—This section may not be con-  
6 strued—

7           (1) to require a health information trustee to  
8 disclose protected health information; or

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

12       (h) SUBPOENAS, WARRANTS, AND SEARCH WAR-  
13 RANTS.—If a health information trustee discloses pro-  
14 tected health information pursuant to an authorization in  
15 order to comply with an administrative subpoena or war-  
16 rant or a judicial subpoena or search warrant, the author-  
17 ization—

18           (1) shall specifically authorize the disclosure for  
19 the purpose of permitting the trustee to comply with  
20 the subpoena, warrant, or search warrant; and

21           (2) shall otherwise meet the requirements in  
22 this section.

1 **SEC. 113. TREATMENT, PAYMENT, AND OVERSIGHT.**

2 (a) DISCLOSURES BY PLANS, PROVIDERS, AND  
3 OVERSIGHT AGENCIES.—A health information trustee de-  
4 scribed in subsection (d) may disclose protected health in-  
5 formation to a health benefit plan sponsor, health care  
6 provider, or health oversight agency if the disclosure is—

7 (1) for the purpose of providing health care and  
8 a protected individual who is a subject of the infor-  
9 mation has not previously objected to the disclosure  
10 in writing;

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

13 (3) for use by a health oversight agency for a  
14 purpose that is described in subparagraph (A) or  
15 (B)(i) of section 3(b)(6).

16 (b) DISCLOSURES BY CERTAIN OTHER TRUSTEES.—  
17 A health information trustee may disclose protected health  
18 information to a health care provider if—

19 (1) the disclosure is for the purpose described  
20 in subsection (a)(1); and

21 (2) the trustee—

22 (A) is a public health authority;

23 (B) received protected health information  
24 pursuant to section 117 (relating to emergency  
25 circumstances); or

1 (C) is an officer or employee of a trustee  
2 described in subparagraph (B).

3 (c) USE IN ACTION AGAINST INDIVIDUAL.—A person  
4 who receives protected health information about a pro-  
5 tected individual through a disclosure under this section  
6 may not use or disclose the information in any administra-  
7 tive, civil, or criminal action or investigation directed  
8 against the individual, except an action or investigation  
9 arising out of and related to receipt of health care or pay-  
10 ment for health care.

11 (d) APPLICABILITY.—A health information trustee  
12 referred to in subsection (a) is any of the following:

13 (1) A health benefit plan sponsor.

14 (2) A health care provider.

15 (3) A health oversight agency.

16 **SEC. 114. NEXT OF KIN AND DIRECTORY INFORMATION.**

17 (a) NEXT OF KIN.—A health information trustee who  
18 is a health care provider, who received protected health  
19 information pursuant to section 117 (relating to emer-  
20 gency circumstances), or who is an officer or employee of  
21 such a recipient may orally disclose protected health infor-  
22 mation about a protected individual to the next of kin of  
23 the individual (as defined under State law), or to a person  
24 with whom the individual has a close personal relationship,  
25 if—

1           (1) the trustee has no reason to believe that the  
2           individual would consider the information especially  
3           sensitive;

4           (2) the individual has not previously objected to  
5           the disclosure;

6           (3) the disclosure is consistent with good medi-  
7           cal or other professional practice; and

8           (4) the information disclosed is limited to infor-  
9           mation about health care that is being provided to  
10          the individual at or about the time of the disclosure.

11         (b) DIRECTORY INFORMATION.—

12           (1) IN GENERAL.—A health information trustee  
13          who is a health care provider, who received protected  
14          health information pursuant to section 117 (relating  
15          to emergency circumstances), or who is an officer or  
16          employee of such a recipient may disclose to any  
17          person the information described in paragraph (2)  
18          if—

19                 (A) a protected individual who is a subject  
20                 of the information has not objected in writing  
21                 to the disclosure;

22                 (B) the disclosure is otherwise consistent  
23                 with good medical and other professional prac-  
24                 tice; and

1 (C) the information does not reveal specific  
2 information about the physical or mental condi-  
3 tion or functional status of a protected individ-  
4 ual or about the health care provided to a pro-  
5 tected individual.

6 (2) INFORMATION DESCRIBED.—The informa-  
7 tion referred to in paragraph (1) is the following:

8 (A) The name of an individual receiving  
9 health care from a health care provider on a  
10 premises controlled by the provider.

11 (B) The location of the individual on such  
12 premises.

13 (C) The general health status of the indi-  
14 vidual, described in terms of critical, poor, fair,  
15 stable, satisfactory, or terms denoting similar  
16 conditions.

17 (c) NO DISCLOSURE RECORD REQUIRED.—A health  
18 information trustee who discloses protected health infor-  
19 mation under this section is not required to create and  
20 maintain a record of the disclosure under section 104.

21 (d) RECIPIENTS.—A person to whom protected  
22 health information is disclosed under this section shall not,  
23 by reason of such disclosure, be subject to any require-  
24 ment under this Act.

1 **SEC. 115. PUBLIC HEALTH.**

2 (a) IN GENERAL.—A health information trustee who  
3 is a health care provider or a public health authority may  
4 disclose protected health information to—

5 (1) a public health authority for use in legally  
6 authorized—

7 (A) disease or injury reporting;

8 (B) public health surveillance; or

9 (C) public health investigation or interven-  
10 tion; or

11 (2) an individual who is authorized by law to  
12 receive the information in a public health interven-  
13 tion.

14 (b) USE IN ACTION AGAINST INDIVIDUAL.—A public  
15 health authority who receives protected health information  
16 about a protected individual through a disclosure under  
17 this section may not use or disclose the information in any  
18 administrative, civil, or criminal action or investigation di-  
19 rected against the individual, except where the use or dis-  
20 closure is authorized by law for protection of the public  
21 health.

22 (c) INDIVIDUAL RECIPIENTS.—An individual to  
23 whom protected health information is disclosed under sub-  
24 section (a)(2) shall not, by reason of such disclosure, be  
25 subject to any requirement under this Act.

1 **SEC. 116. HEALTH RESEARCH.**

2 (a) IN GENERAL.—A health information trustee de-  
3 scribed in subsection (c) may disclose protected health in-  
4 formation to a person if—

5 (1) the person is conducting an approved health  
6 research project;

7 (2) the information is to be used in the project;  
8 and

9 (3) the project has been determined by a cer-  
10 tified institutional review board to be—

11 (A) of sufficient importance so as to out-  
12 weigh the intrusion into the privacy of the pro-  
13 tected individual who is the subject of the infor-  
14 mation that would result from the disclosure;  
15 and

16 (B) impracticable to conduct without the  
17 information.

18 (b) LIMITATIONS ON USE AND DISCLOSURE; OBLIGA-  
19 TIONS OF RECIPIENT.—A health researcher who receives  
20 protected health information about a protected individual  
21 pursuant to subsection (a)—

22 (1) may use the information solely for purposes  
23 of an approved health research project;

24 (2) may not use or disclose the information in  
25 any administrative, civil, or criminal action or inves-  
26 tigation directed against the individual; and

1           (3) shall remove or destroy, at the earliest op-  
2           portunity consistent with the purposes of the ap-  
3           proved health research project in connection with  
4           which the disclosure was made, information that  
5           would enable an individual to be identified, unless a  
6           certified institutional review board has determined  
7           that there is a health or research justification for re-  
8           tention of such identifiers and there is an adequate  
9           plan to protect the identifiers from use and disclo-  
10          sure that is inconsistent with this Act.

11          (c) APPLICABILITY.—A health information trustee  
12          referred to in subsection (a) is any health information  
13          trustee other than a person who, with respect to the spe-  
14          cific protected health information to be disclosed under  
15          such subsection, received the information—

16                (1) pursuant to—

17                    (A) section 118 (relating to judicial and  
18                    administrative purposes);

19                    (B) paragraph (1), (2), (3), or (4) of sec-  
20                    tion 119(a) (relating to law enforcement); or

21                    (C) section 120 (relating to subpoenas,  
22                    warrants, and search warrants); or

23                (2) while acting in whole or in part in the ca-  
24                pacity of an officer or employee of a person de-  
25                scribed in paragraph (1).



1 (d) REQUIREMENTS FOR INSTITUTIONAL REVIEW  
2 BOARDS.—

3 (1) REGULATIONS.—Not later than July 1,  
4 1999, the Secretary, after opportunity for notice and  
5 comment, shall promulgate regulations establishing  
6 requirements for certified institutional review boards  
7 under this Act. The regulations shall be based on  
8 regulations promulgated under section 491(a) of the  
9 Public Health Service Act and shall ensure that cer-  
10 tified institutional review boards are qualified to as-  
11 sess and protect the confidentiality of research sub-  
12 jects.

13 (2) CERTIFICATION.—The Secretary shall cer-  
14 tify that an institutional review board satisfies the  
15 requirements of the regulations promulgated under  
16 paragraph (1).

17 **SEC. 117. EMERGENCY CIRCUMSTANCES.**

18 (a) IN GENERAL.—A health information trustee may  
19 disclose protected health information if the trustee be-  
20 lieves, on reasonable grounds, that the disclosure is nec-  
21 essary to prevent or lessen a serious and imminent threat  
22 to the health or safety of an individual.

23 (b) USE IN ACTION AGAINST INDIVIDUAL.—A person  
24 who receives protected health information about a pro-  
25 tected individual through a disclosure under this section

1 may not use or disclose the information in any administra-  
 2 tive, civil, or criminal action or investigation directed  
 3 against the individual, except an action or investigation  
 4 arising out of and related to receipt of health care or pay-  
 5 ment for health care.

6 **SEC. 118. JUDICIAL AND ADMINISTRATIVE PURPOSES.**

7 (a) IN GENERAL.—A health information trustee de-  
 8 scribed in subsection (d) may disclose protected health in-  
 9 formation—

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 a protected individual who is a subject of  
 15 the information is a party and in which the individ-  
 16 ual has placed the individual’s physical or mental  
 17 condition or functional status in issue;

18 (2) if directed by a court in connection with a  
 19 court-ordered examination of an individual; or

20 (3) to assist in the identification of a dead  
 21 individual.

22 (b) WRITTEN STATEMENT.—A person seeking pro-  
 23 tected health information about a protected individual held  
 24 by health information trustee under—

25 (1) subsection (a)(1)—

1 (A) shall notify the protected individual or  
2 the attorney of the protected individual of the  
3 request for the information;

4 (B) shall provide the trustee with a signed  
5 document attesting—

6 (i) that the protected individual is a  
7 party to the litigation or proceedings for  
8 which the information is sought;

9 (ii) that the individual has placed the  
10 individual's physical or mental condition or  
11 functional status in issue; and

12 (iii) the date on which the protected  
13 individual or the attorney of the protected  
14 individual was notified under subparagraph  
15 (A); and

16 (C) shall not accept any requested pro-  
17 tected health information from the trustee until  
18 the termination of the 10-day period beginning  
19 on the date notice was given under subpara-  
20 graph (A); or

21 (2) subsection (a)(3) shall provide the trustee  
22 with a written statement that the information is  
23 sought to assist in the identification of a dead indi-  
24 vidual.

1       (c) USE AND DISCLOSURE.—A person to whom pro-  
2       tected health information is disclosed under this section  
3       may use and disclose the information only to accomplish  
4       the purpose for which the disclosure was made.

5       (d) APPLICABILITY.—A health information trustee  
6       referred to in subsection (a) is any of the following:

7               (1) A health benefit plan sponsor.

8               (2) A health care provider.

9               (3) A health oversight agency.

10              (4) A person who, with respect to the specific  
11       protected health information to be disclosed under  
12       such subsection, received the information—

13                      (A) pursuant to—

14                              (i) section 117 (relating to emergency  
15                      circumstances); or

16                              (ii) section 120 (relating to subpoe-  
17                      nas, warrants, and search warrants); or

18                      (B) while acting in whole or in part in the  
19       capacity of an officer or employee of a person  
20       described in subparagraph (A).

21       **SEC. 119. LAW ENFORCEMENT.**

22       (a) IN GENERAL.—A health information trustee may  
23       disclose protected health information to a law enforcement  
24       agency, other than a health oversight agency—

1           (1) if the information is disclosed for use in an  
2           investigation or prosecution of a health information  
3           trustee;

4           (2) 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           (3) if the information is needed to determine  
8           whether a crime has been committed and the nature  
9           of any crime that may have been committed (other  
10          than a crime that may have been committed by the  
11          protected individual who is the subject of the infor-  
12          mation).

13          (b) ADDITIONAL AUTHORITY OF CERTAIN TRUST-  
14          EES.—A health information trustee who is not a public  
15          health authority or a health researcher may disclose pro-  
16          tected health information to a law enforcement agency  
17          (other than a health oversight agency)—

18               (1) to assist in the identification or location of  
19               a victim, fugitive, or witness in a law enforcement  
20               inquiry;

21               (2) pursuant to a law requiring the reporting of  
22               specific health care information to law enforcement  
23               authorities; or

1           (3) if the information is specific health informa-  
2           tion described in paragraph (2) and the trustee is  
3           operated by a Federal agency;

4           (c) CERTIFICATION.—Where a law enforcement agen-  
5           cy requests a health information trustee to disclose pro-  
6           tected health information under subsection (a) or (b)(1),  
7           the agency shall provide the trustee with a written certifi-  
8           cation that—

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

11          (2) specifies the information requested; and

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

14          (d) RESTRICTIONS ON DISCLOSURE AND USE.—A  
15          person who receives protected health information about a  
16          protected individual through a disclosure under this sec-  
17          tion may not use or disclose the information—

18          (1) in any administrative, civil, or criminal ac-  
19          tion or investigation directed against the individual,  
20          except an action or investigation arising out of and  
21          directly related to the action or investigation for  
22          which the information was obtained; and

1           (2) otherwise unless the use or disclosure is  
2           necessary to fulfill the purpose for which the infor-  
3           mation was obtained and is not prohibited by any  
4           other provision of law.

5 **SEC. 120. SUBPOENAS, WARRANTS, AND SEARCH WAR-**  
6 **RANTS.**

7           (a) IN GENERAL.—A health information trustee de-  
8           scribed in subsection (g) may disclose protected health in-  
9           formation if the disclosure is pursuant to any of the fol-  
10          lowing:

11           (1) A subpoena issued under the authority of a  
12           grand jury and the trustee is provided a written cer-  
13           tification by the grand jury that the grand jury has  
14           complied with the applicable access provisions of sec-  
15           tion 131.

16           (2) An administrative subpoena or warrant or  
17           a judicial subpoena or search warrant and the trust-  
18           ee is provided a written certification by the person  
19           seeking the information that the person has com-  
20           plied with the applicable access provisions of section  
21           131 or 133(a).

22           (3) An administrative subpoena or warrant or  
23           a judicial subpoena or search warrant and the dis-  
24           closure otherwise meets the conditions of one of sec-  
25           tions 113 through 119.

1 (b) AUTHORITY OF ALL TRUSTEES.—Any health in-  
2 formation trustee may disclose protected health informa-  
3 tion if the disclosure is pursuant to subsection (a)(3).

4 (c) RESTRICTIONS ON USE AND DISCLOSURE.—Pro-  
5 tected health information about a protected individual that  
6 is disclosed by a health information trustee pursuant to—

7 (1) subsection (a)(2) may not be otherwise used  
8 or disclosed by the recipient unless the use or disclo-  
9 sure is necessary to fulfill the purpose for which the  
10 information was obtained; and

11 (2) subsection (a)(3) may not be used or dis-  
12 closed by the recipient unless the recipient complies  
13 with the conditions and restrictions on use and dis-  
14 closure with which the recipient would have been re-  
15 quired to comply if the disclosure by the trustee had  
16 been made under the section referred to in sub-  
17 section (a)(3) the conditions of which were met by  
18 the disclosure.

19 (d) RESTRICTIONS ON GRAND JURIES.—Protected  
20 health information that is disclosed by a health informa-  
21 tion trustee under subsection (a)(1)—

22 (1) shall be returnable on a date when the  
23 grand jury is in session and actually presented to  
24 the grand jury;



1           (2) shall be used only for the purpose of consid-  
2           ering whether to issue an indictment or report by  
3           that grand jury, or for the purpose of prosecuting a  
4           crime for which that indictment or report is issued,  
5           or for a purpose authorized by rule 6(e) of the Fed-  
6           eral Rules of Criminal Procedure or a comparable  
7           State rule;

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

11          (4) shall not be maintained, or a description of  
12          the contents of such information shall not be main-  
13          tained, by any government authority other than in  
14          the sealed records of the grand jury, unless such in-  
15          formation has been used in the prosecution of a  
16          crime for which the grand jury issued an indictment  
17          or presentment or for a purpose authorized by rule  
18          6(e) of the Federal Rules of Criminal Procedure or  
19          a comparable State rule.

20          (e) USE IN ACTION AGAINST INDIVIDUAL.—A person  
21          who receives protected health information about a pro-  
22          tected individual through a disclosure under this section  
23          may not use or disclose the information in any administra-  
24          tive, civil, or criminal action or investigation directed  
25          against the individual, except an action or investigation

1 arising out of and directly related to the inquiry for which  
 2 the information was obtained;

3 (f) CONSTRUCTION.—Nothing in this section shall be  
 4 construed as authority for a health information trustee to  
 5 refuse to comply with a valid administrative subpoena or  
 6 warrant or a valid judicial subpoena or search warrant  
 7 that meets the requirements of this Act.

8 (g) APPLICABILITY.—A health information trustee  
 9 referred to in subsection (a) is any trustee other than the  
 10 following:

11 (1) A public health authority.

12 (2) A health researcher.

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

### 15 **SEC. 131. 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 a protected individual from a health informa-  
 21 tion trustee under paragraph (1) or (2) of section 120(a)  
 22 for use in a law enforcement inquiry unless there is prob-  
 23 able cause to believe that the information is relevant to  
 24 a legitimate law enforcement inquiry being conducted by  
 25 the government authority.

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

10       (c) SUBPOENAS.—Except as provided in subsection  
11   (d), a government authority may not obtain protected  
12   health information about a protected individual from a  
13   health information trustee under circumstances described  
14   in subsection (a) and pursuant to a subpoena unless a  
15   copy of the subpoena has been served by hand delivery  
16   upon the individual, or mailed to the last known address  
17   of the individual, on or before the date on which the sub-  
18   poena was served on the trustee, together with a notice  
19   (published by the Secretary under section 135(1)) of the  
20   individual's right to challenge the subpoena in accordance  
21   with section 132, and—

22       (1) 30 days have passed from the date of serv-  
23       ice, or 30 days have passed from the date of mailing,  
24       and within such time period the individual has not

1 initiated a challenge in accordance with section 132;  
2 or

3 (2) disclosure is ordered by a court under sec-  
4 tion 132.

5 (d) APPLICATION FOR DELAY.—

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

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

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

1 (A) the inquiry being conducted is within  
2 the lawful jurisdiction of the government au-  
3 thority seeking the protected health informa-  
4 tion;

5 (B) there is probable cause to believe that  
6 the protected health information being sought is  
7 relevant to a legitimate law enforcement inquiry  
8 being conducted by the government authority;

9 (C) the government authority's need for  
10 the information outweighs the privacy interest  
11 of the protected individual who is the subject of  
12 the information; and

13 (D) there are reasonable grounds to believe  
14 that receipt of a notice by the individual will re-  
15 sult in—

16 (i) endangering the life or physical  
17 safety of any individual;

18 (ii) flight from prosecution;

19 (iii) destruction of or tampering with  
20 evidence or the information being sought;

21 or

22 (iv) intimidation of potential wit-  
23 nesses.

24 (4) SERVICE OF APPLICATION ON INDIVID-  
25 UAL.—Upon the expiration of a period of delay of

1 notice under this subsection, the government author-  
2 ity shall serve upon the individual, with the service  
3 of the subpoena and the notice, a copy of any appli-  
4 cations filed and approved under this subsection.

5 **SEC. 132. CHALLENGE PROCEDURES FOR LAW ENFORCE-**  
6 **MENT SUBPOENAS.**

7 (a) MOTION TO QUASH SUBPOENA.—Within 30 days  
8 of the date of service, or 30 days of the date of mailing,  
9 of a subpoena of a government authority seeking protected  
10 health information about a protected individual from a  
11 health information trustee under paragraph (1) or (2) of  
12 section 120(a) (except a subpoena to which section 133  
13 applies), the individual may file (without filing fee) a mo-  
14 tion to quash the subpoena—

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

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

20 (3) in the case of a subpoena issued under the  
21 authority of a Federal court, in any court of the  
22 United States of competent jurisdiction; or

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

1 (A) the United States district court for the  
2 district in which the individual resides or in  
3 which the subpoena was issued; or

4 (B) another United States district court of  
5 competent jurisdiction.

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

9 (c) AFFIDAVITS AND SWORN DOCUMENTS.—The gov-  
10 ernment authority may file with the court such affidavits  
11 and other sworn documents as sustain the validity of the  
12 subpoena. The individual may file with the court, within  
13 5 days of the date of the authority's filing, affidavits and  
14 sworn documents in response to the authority's filing. The  
15 court, upon the request of the individual, the government  
16 authority, or both, may proceed in camera.

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

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

1       (f) STANDARD FOR DECISION.—A court may deny a  
2 motion under subsection (a) if it finds that there is prob-  
3 able cause to believe that the protected health information  
4 being sought is relevant to a legitimate law enforcement  
5 inquiry being conducted by the government authority, un-  
6 less the court finds that the individual’s privacy interest  
7 outweighs the government authority’s need for the infor-  
8 mation. The individual shall have the burden of dem-  
9 onstrating that the individual’s privacy interest outweighs  
10 the need established by the government authority for the  
11 information.

12       (g) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
13 PRIVACY INTEREST.—In determining under subsection (f)  
14 whether an individual’s privacy interest outweighs the gov-  
15 ernment authority’s need for the information, the court  
16 shall consider—

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

19           (2) the degree to which disclosure of the infor-  
20 mation will embarrass, injure, or invade the privacy  
21 of the individual;

22           (3) the effect of the disclosure on the individ-  
23 ual’s future health care;



1           (4) the importance of the inquiry being con-  
 2           ducted by the government authority, and the impor-  
 3           tance of the information to that inquiry; and

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

6           (h) ATTORNEY'S FEES.—In the case of any motion  
 7           brought under subsection (a) in which the individual has  
 8           substantially prevailed, the court, in its discretion, may as-  
 9           sess against a government authority a reasonable attor-  
 10          ney's fee and other litigation costs (including expert fees)  
 11          reasonably incurred.

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

21       **SEC. 133. ACCESS AND CHALLENGE PROCEDURES FOR**  
 22       **OTHER SUBPOENAS.**

23          (a) IN GENERAL.—A person (other than a govern-  
 24          ment authority seeking protected health information under  
 25          circumstances described in section 131(a)) may not obtain

1 protected health information about a protected individual  
2 from a health information trustee pursuant to a subpoena  
3 under section 120(a)(2) unless—

4           (1) a copy of the subpoena has been served  
5       upon the individual or mailed to the last known ad-  
6       dress of the individual on or before the date on  
7       which the subpoena was served on the trustee, to-  
8       gether with a notice (published by the Secretary  
9       under section 135(2)) of the individual's right to  
10      challenge the subpoena, in accordance with sub-  
11      section (b); and

12           (2) either—

13                (A) 30 days have passed from the date of  
14           service or 30 days have passed from the date of  
15           the mailing and within such time period the in-  
16           dividual has not initiated a challenge in accord-  
17           ance with subsection (b); or

18                (B) disclosure is ordered by a court under  
19           such subsection.

20       (b) MOTION TO QUASH.—Within 30 days of the date  
21 of service or 30 days of the date of mailing of a subpoena  
22 seeking protected health information about a protected in-  
23 dividual from a health information trustee under sub-  
24 section (a), the individual may file (without filing fee) in  
25 any court of competent jurisdiction, a motion to quash the

1 subpoena, with a copy served on the person seeking the  
2 information. The individual may oppose, or seek to limit,  
3 the subpoena on any grounds that would otherwise be  
4 available if the individual were in possession of the infor-  
5 mation.

6 (c) STANDARD FOR DECISION.—The court shall  
7 grant an individual’s motion under subsection (b) if the  
8 person seeking the information has not sustained the bur-  
9 den of demonstrating that—

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

13 (2) the need of the person for the information  
14 outweighs the privacy interest of the individual.

15 (d) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
16 PRIVACY INTEREST.—In determining under subsection (c)  
17 whether the need of the person for the information out-  
18 weighs the privacy interest of the individual, the court  
19 shall consider—

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

22 (2) the degree to which disclosure of the infor-  
23 mation will embarrass, injure, or invade the privacy  
24 of the individual;

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

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

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

7       (e) ATTORNEY'S FEES.—In the case of any motion  
8       brought under subsection (b) by an individual against a  
9       person in which the individual has substantially prevailed,  
10      the court, in its discretion, may assess against the person  
11      a reasonable attorney's fee and other litigation costs (in-  
12      cluding expert fees) reasonably incurred.

13   **SEC. 134. CONSTRUCTION OF SUBTITLE; SUSPENSION OF**  
14                   **STATUTE OF LIMITATIONS.**

15       (a) IN GENERAL.—Nothing in this subtitle shall af-  
16      fect the right of a health information trustee to challenge  
17      a request for protected health information. Nothing in this  
18      subtitle shall entitle a protected individual to assert the  
19      rights of a health information trustee.

20       (b) EFFECT OF MOTION ON STATUTE OF LIMITA-  
21      TIONS.—If an individual who is the subject of protected  
22      health information files a motion under this subtitle which  
23      has the effect of delaying the access of a government au-  
24      thority to such information, the period beginning on the  
25      date such motion was filed and ending on the date on

1 which the motion is decided shall be excluded in computing  
 2 any period of limitations within which the government au-  
 3 thority may commence any civil or criminal action in con-  
 4 nection with which the access is sought.

5 **SEC. 135. RESPONSIBILITIES OF SECRETARY.**

6 Not later than July 1, 1999, the Secretary, after no-  
 7 tice and opportunity for public comment, shall develop and  
 8 disseminate brief, clear, and easily understood model  
 9 notices—

10 (1) for use under subsection (c) of section 131,  
 11 detailing the rights of a protected individual who  
 12 wishes to challenge, under section 132, the disclo-  
 13 sure of protected health information about the indi-  
 14 vidual under such subsection; and

15 (2) for use under subsection (a) of section 133,  
 16 detailing the rights of a protected individual who  
 17 wishes to challenge, under subsection (b) of such  
 18 section, the disclosure of protected health informa-  
 19 tion about the individual under such section.

20 **Subtitle D—Miscellaneous**  
 21 **Provisions**

22 **SEC. 141. PAYMENT CARD AND ELECTRONIC PAYMENT**  
 23 **TRANSACTIONS.**

24 (a) PAYMENT FOR HEALTH CARE THROUGH CARD  
 25 OR ELECTRONIC MEANS.—If a protected individual pays

1 a health information trustee for health care by presenting  
2 a debit, credit, or other payment card or account number,  
3 or by any other electronic payment means, the trustee may  
4 disclose to a person described in subsection (b) only such  
5 protected health information about the individual as is  
6 necessary for the processing of the payment transaction  
7 or the billing or collection of amounts charged to, debited  
8 from, or otherwise paid by, the individual using the card,  
9 number, or other electronic payment means.

10 (b) TRANSACTION PROCESSING.—A person who is a  
11 debit, credit, or other payment card issuer, is otherwise  
12 directly involved in the processing of payment transactions  
13 involving such cards or other electronic payment trans-  
14 actions, or is otherwise directly involved in the billing or  
15 collection of amounts paid through such means, may only  
16 use or disclose protected health information about a pro-  
17 tected individual that has been disclosed in accordance  
18 with subsection (a) when necessary for—

19 (1) the authorization, settlement, billing or col-  
20 lection of amounts charged to, debited from, or oth-  
21 erwise paid by, the individual using a debit, credit,  
22 or other payment card or account number, or by  
23 other electronic payment means;

24 (2) the transfer of receivables, accounts, or in-  
25 terest therein;

1           (3) the audit of the credit, debit, or other pay-  
2           ment card account information;

3           (4) compliance with Federal, State, or local law;  
4           or

5           (5) a properly authorized civil, criminal, or reg-  
6           ulatory investigation by Federal, State, or local au-  
7           thorities.

8   **SEC. 142. ACCESS TO PROTECTED HEALTH INFORMATION**  
9                           **OUTSIDE OF THE UNITED STATES.**

10       (a) IN GENERAL.—Notwithstanding the provisions of  
11       subtitle B, and except as provided in subsection (b), a  
12       health information trustee may not permit any person who  
13       is not in a State to have access to protected health infor-  
14       mation about a protected individual unless one or more  
15       of the following conditions exist:

16           (1) SPECIFIC AUTHORIZATION.—The individual  
17       has specifically consented to the provision of such  
18       access outside of the United States in an authoriza-  
19       tion that meets the requirements of section 112.

20           (2) EQUIVALENT PROTECTION.—The provision  
21       of such access is authorized under this Act and the  
22       Secretary has determined that there are fair infor-  
23       mation practices for protected health information in  
24       the jurisdiction where the access will be provided

1       that provide protections for individuals and pro-  
2       tected health information that are equivalent to the  
3       protections provided for by this Act.

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

6                       (A) a Federal statute; or

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

9       (b) EXCEPTIONS.—Subsection (a) does not apply  
10     where the provision of access to protected health informa-  
11     tion—

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

13                   (2) is authorized under section 114 (relating to  
14     next of kin and directory information), 116 (relating  
15     to health research), or 117 (relating to emergency  
16     circumstances); or

17                   (3) is necessary for the purpose of providing for  
18     payment for health care that has been provided to  
19     an individual.

20     **SEC. 143. STANDARDS FOR ELECTRONIC DOCUMENTS AND**  
21                   **COMMUNICATIONS.**

22       (a) STANDARDS.—Not later than July 1, 1999, the  
23     Secretary, after notice and opportunity for public com-  
24     ment and in consultation with appropriate private stand-  
25     ard-setting organizations and other interested parties,



1 shall establish standards with respect to the creation,  
2 transmission, receipt, and maintenance, in electronic and  
3 magnetic form, of each type of written document specifi-  
4 cally required or authorized under this Act. Where a sig-  
5 nature is required under any other provision of this Act,  
6 such standards shall provide for an electronic or magnetic  
7 substitute that serves the functional equivalent of a signa-  
8 ture.

9 (b) TREATMENT OF COMPLYING DOCUMENTS AND  
10 COMMUNICATIONS.—An electronic or magnetic document  
11 or communication that satisfies the standards established  
12 under subsection (a) with respect to such document or  
13 communication shall be treated as satisfying the require-  
14 ments of this Act that apply to an equivalent written docu-  
15 ment.

16 **SEC. 144. DUTIES AND AUTHORITIES OF AFFILIATED PER-**  
17 **SONS.**

18 (a) REQUIREMENTS ON TRUSTEES.—

19 (1) PROVISION OF INFORMATION.—A health in-  
20 formation trustee may provide protected health in-  
21 formation to a person who, with respect to the trust-  
22 ee, is an affiliated person and may permit the affili-  
23 ated person to use such information, only for the  
24 purpose of conducting, supporting, or facilitating an  
25 activity that the trustee is authorized to undertake.

1           (2) NOTICE TO AFFILIATED PERSON.—A health  
2           information trustee shall notify a person who, with  
3           respect to the trustee, is an affiliated person of any  
4           duties under this Act that the affiliated person is re-  
5           quired to fulfill and of any authorities under this  
6           Act that the affiliated person is authorized to exer-  
7           cise.

8           (b) DUTIES OF AFFILIATED PERSONS.—

9           (1) IN GENERAL.—An affiliated person shall  
10          fulfill any duty under this Act that—

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

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

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

1           (3) EFFECT ON TRUSTEE.—An agreement or  
2       relationship with an affiliated person does not relieve  
3       a health information trustee of any duty or liability  
4       under this Act.

5       (b) AUTHORITIES OF AFFILIATED PERSONS.—

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

17          (2) EFFECT ON TRUSTEE.—An agreement or  
18      relationship with an affiliated person does not affect  
19      the authority of a health information trustee under  
20      this Act.

21   **SEC. 145. AGENTS AND ATTORNEYS.**

22          (a) IN GENERAL.—Except as provided in subsections  
23      (b) and (c), a person who is authorized by law (on grounds  
24      other than an individual's minority), or by an instrument  
25      recognized under law, to act as an agent, attorney, proxy,

1 or other legal representative for a protected individual or  
2 the estate of a protected individual, or otherwise to exer-  
3 cise the rights of the individual or estate, may, to the ex-  
4 tent authorized, exercise and discharge the rights of the  
5 individual or estate under this Act.

6 (b) HEALTH CARE POWER OF ATTORNEY.—A person  
7 who is authorized by law (on grounds other than an indi-  
8 vidual’s minority), or by an instrument recognized under  
9 law, to make decisions about the provision of health care  
10 to an individual who is incapacitated may exercise and dis-  
11 charge the rights of the individual under this Act to the  
12 extent necessary to effectuate the terms or purposes of  
13 the grant of authority.

14 (c) NO COURT DECLARATION.—If a health care pro-  
15 vider determines that an individual, who has not been de-  
16 clared to be legally incompetent, suffers from a medical  
17 condition that prevents the individual from acting know-  
18 ingly or effectively on the individual’s own behalf, the right  
19 of the individual to authorize disclosure under section 112  
20 may be exercised and discharged in the best interest of  
21 the individual by—

22 (1) a person described in subsection (b) with re-  
23 spect to the individual;

1           (2) a person described in subsection (a) with re-  
2       spect to the individual, but only if a person de-  
3       scribed in paragraph (1) cannot be contacted after  
4       a reasonable effort;

5           (3) the next of kin of the individual, but only  
6       if a person described in paragraph (1) or (2) cannot  
7       be contacted after a reasonable effort; or

8           (4) the health care provider, but only if a per-  
9       son described in paragraph (1), (2), or (3) cannot be  
10      contacted after a reasonable effort.

11 **SEC. 146. MINORS.**

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

14           (1) who is 18 years of age or older, all rights  
15       of the individual shall be exercised by the individual,  
16       except as provided in section 145; or

17           (2) who, acting alone, has the legal capacity to  
18       apply for and obtain health care and has sought  
19       such care, the individual shall exercise all rights of  
20       an individual under this Act with respect to pro-  
21       tected health information relating to such care.

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

1           (1) under 14 years of age, all the individual's  
 2           rights under this Act shall be exercised through the  
 3           parent or legal guardian of the individual; or

4           (2) 14, 15, 16, or 17 years of age, the right of  
 5           inspection (under section 101), the right of amend-  
 6           ment (under section 102), and the right to authorize  
 7           disclosure of protected health information (under  
 8           section 112) of the individual may be exercised ei-  
 9           ther by the individual or by the parent or legal  
 10          guardian of the individual.

11 **SEC. 147. MAINTENANCE OF CERTAIN PROTECTED HEALTH**  
 12 **INFORMATION.**

13          (a) IN GENERAL.—A State shall establish a process  
 14          under which the protected health information described in  
 15          subsection (b) that is maintained by a person described  
 16          in subsection (c) is delivered to, and maintained by, the  
 17          State or an individual or entity designated by the State.

18          (b) INFORMATION DESCRIBED.—The protected  
 19          health information referred to in subsection (a) is pro-  
 20          tected health information that—

21               (1) is recorded in any form or medium;

22               (2) is created by—

23                       (A) a health care provider; or

24                       (B) a health benefit plan sponsor that pro-  
 25          vides benefits in the form of items and services

1 to enrollees and not in the form of reimburse-  
 2 ment for items and services; and

3 (3) relates in any way to the past, present, or  
 4 future physical or mental health or condition or  
 5 functional status of a protected individual or the  
 6 provision of health care to a protected individual.

7 (c) PERSONS DESCRIBED.—A person referred to in  
 8 subsection (a) is any of the following:

9 (1) A health care facility previously located in  
 10 the State that has closed.

11 (2) A professional practice previously operated  
 12 by a health care provider in the State that has  
 13 closed.

14 (3) A health benefit plan sponsor that—

15 (A) previously provided benefits in the  
 16 form of items and services to enrollees in the  
 17 State; and

18 (B) has ceased to do business.

## 19 **Subtitle E—Enforcement**

### 20 **SEC. 151. CIVIL ACTIONS.**

21 (a) IN GENERAL.—Any individual whose right under  
 22 this Act has been knowingly or negligently violated—

23 (1) by a health information trustee, or any  
 24 other person, who is not described in paragraph (2),

25 (3), (4), or (5) may maintain a civil action for actual

1 damages and for equitable relief against the health  
2 information trustee or other person;

3 (2) by an officer or employee of the United  
4 States while the officer or employee was acting with-  
5 in the scope of the office or employment may main-  
6 tain a civil action for actual damages and for equi-  
7 table relief against the United States;

8 (3) by an officer or employee of any government  
9 authority of a State that has waived its sovereign  
10 immunity to a claim for damages resulting from a  
11 violation of this Act while the officer or employee  
12 was acting within the scope of the office or employ-  
13 ment may maintain a civil action for actual damages  
14 and for equitable relief against the State govern-  
15 ment;

16 (4) by an officer or employee of a government  
17 of a State that is not described in paragraph (3)  
18 may maintain a civil action for actual damages and  
19 for equitable relief against the officer or employee;  
20 or

21 (5) by an officer or employee of a government  
22 authority while the officer or employee was not act-  
23 ing within the scope of the office or employment  
24 may maintain a civil action for actual damages and  
25 for equitable relief against the officer or employee.



1 (b) KNOWING VIOLATIONS.—Any individual entitled  
2 to recover actual damages under this section because of  
3 a knowing violation of a provision of this Act (other than  
4 subsection (c) or (d) of section 111) shall be entitled to  
5 recover the amount of the actual damages demonstrated  
6 or \$5000, whichever is greater.

7 (c) ACTUAL DAMAGES.—For purposes of this section,  
8 the term “actual damages” includes damages paid to com-  
9 pensate an individual for nonpecuniary losses such as  
10 physical and mental injury as well as damages paid to  
11 compensate for pecuniary losses.

12 (d) PUNITIVE DAMAGES; ATTORNEY’S FEES.—In  
13 any action brought under this section in which the com-  
14 plainant has prevailed because of a knowing violation of  
15 a provision of this Act (other than subsection (c) or (d)  
16 of section 111), the court may, in addition to any relief  
17 awarded under subsections (a) and (b), award such puni-  
18 tive damages as may be warranted. In such an action, the  
19 court, in its discretion, may allow the prevailing party a  
20 reasonable attorney’s fee (including expert fees) as part  
21 of the costs, and the United States shall be liable for costs  
22 the same as a private person.

23 (e) LIMITATION.—A civil action under this section  
24 may not be commenced more than 2 years after the date  
25 on which the aggrieved individual discovered the violation

1 or the date on which the aggrieved individual had a rea-  
2 sonable opportunity to discover the violation, whichever oc-  
3 curs first.

4 (f) INSPECTION AND AMENDMENT.—If a health in-  
5 formation trustee has established a formal internal proce-  
6 dure that allows an individual who has been denied inspec-  
7 tion or amendment of protected health information to ap-  
8 peal the denial, the individual may not maintain a civil  
9 action in connection with the denial until the earlier of—  
10 (1) the date the appeal procedure has been ex-  
11 hausted; or  
12 (2) the date that is 4 months after the date on  
13 which the appeal procedure was initiated.

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

20 (h) NO LIABILITY FOR INSTITUTIONAL REVIEW  
21 BOARD DETERMINATIONS.—If the members of a certified  
22 institutional review board have in good faith determined  
23 that an approved health research project is of sufficient  
24 importance so as to outweigh the intrusion into the privacy

1 of an individual pursuant to section 116(a)(1), the mem-  
2 bers, the board, and the parent institution of the board  
3 shall not be liable to the individual as a result of such  
4 determination.

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

11 **SEC. 152. CIVIL MONEY PENALTIES.**

12 (a) VIOLATION.—Any health information trustee who  
13 the Secretary determines has demonstrated a pattern or  
14 practice of failure to comply with the provisions of this  
15 Act shall be subject, in addition to any other penalties that  
16 may be prescribed by law, to a civil money penalty of not  
17 more than \$10,000 for each such failure. In determining  
18 the amount of any penalty to be assessed under the proce-  
19 dures established under subsection (b), the Secretary shall  
20 take into account the previous record of compliance of the  
21 person being assessed with the applicable requirements of  
22 this Act and the gravity of the violation.

23 (b) PROCEDURES FOR IMPOSITION OF PENALTIES.—  
24 The provisions of section 1128A of the Social Security Act

1 (other than subsections (a) and (b)) shall apply to the im-  
 2 position of a civil monetary penalty under this section in  
 3 the same manner as such provisions apply with respect  
 4 to the imposition of a penalty under section 1128A of such  
 5 Act.

6 **SEC. 153. ALTERNATIVE DISPUTE RESOLUTION.**

7 (a) IN GENERAL.—Not later than July 1, 1999, the  
 8 Secretary shall, by regulation, develop alternative dispute  
 9 resolution methods for use by individuals, health informa-  
 10 tion trustees, and other persons in resolving claims under  
 11 section 151.

12 (b) EFFECT ON INITIATION OF CIVIL ACTIONS.—

13 (1) IN GENERAL.—Subject to paragraph (2),  
 14 the regulations established under subsection (a) may  
 15 provide that an individual alleging that a right of  
 16 the individual under this Act has been violated shall  
 17 pursue at least one alternative dispute resolution  
 18 method developed under such subsection as a condi-  
 19 tion precedent to commencing a civil action under  
 20 section 151.

21 (2) LIMITATION.—Such regulations may not re-  
 22 quire an individual to refrain from commencing a  
 23 civil action to pursue one or more alternative dispute  
 24 resolution method for a period that is greater than  
 25 6 months.

1           (3) SUSPENSION OF STATUTE OF LIMITA-  
2           TIONS.—The regulations established by the Sec-  
3           retary under subsection (a) may provide that a pe-  
4           riod in which an individual described in paragraph  
5           (1) pursues (as defined by the Secretary) an alter-  
6           native dispute resolution method under this section  
7           shall be excluded in computing the period of limita-  
8           tions under section 151(e).

9           (c) METHODS.—The methods under subsection (a)  
10          shall include at least the following:

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

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

13               (3) EARLY OFFERS OF SETTLEMENT.—The use  
14          of a process under which parties make early offers  
15          of settlement.

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

20               (1) is affordable for the parties involved;

21               (2) provides for timely and fair resolution of  
22          claims; and

23               (3) provides for reasonably convenient access to  
24          dispute resolution for individuals.

1 **SEC. 154. AMENDMENTS TO CRIMINAL LAW.**

2 (a) IN GENERAL.—Title 18, United States Code, is  
3 amended by inserting after chapter 73 the following:

4 **“CHAPTER 74—OBTAINING PROTECTED HEALTH**  
5 **INFORMATION**

“Sec.

“1531. Definitions.

“1532. Obtaining protected health information under false pretenses.

“1533. Monetary gain from obtaining protected health information under false  
pretenses.

“1534. Knowing and unlawful obtaining of protected health information.

“1535. Monetary gain from knowing and unlawful obtaining of protected health  
information.

“1536. Knowing and unlawful use or disclosure of protected health information.

“1537. Monetary gain from knowing and unlawful sale, transfer, or use of pro-  
tected health information.

6 **“§ 1531. Definitions**

7 “As used in this chapter—

8 “(1) the term ‘health information trustee’ has  
9 the meaning given such term in section 3(b)(5) of  
10 the Fair Health Information Practices Act of 1997;

11 “(2) the term ‘protected health information’ has  
12 the meaning given such term in section 3(a)(3) of  
13 such Act; and

14 “(3) the term ‘protected individual’ has the  
15 meaning given such term in section 3(a)(4) of such  
16 Act.

17 **“§ 1532. Obtaining protected health information**  
18 **under false pretenses**

19 “Whoever under false pretenses—

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

3           “(2) obtains from a protected individual an au-  
4           thorization for the disclosure of protected health in-  
5           formation about the individual maintained by a  
6           health information trustee;

7           shall be fined under this title or imprisoned not more than  
8           5 years, or both.

9   **“§ 1533. Monetary gain from obtaining protected**  
10           **health information under false pretenses**

11           “Whoever under false pretenses—

12           “(1) requests or obtains protected health infor-  
13           mation from a health information trustee with the  
14           intent to sell, transfer, or use such information for  
15           profit or monetary gain; or

16           “(2) obtains from a protected individual an au-  
17           thorization for the disclosure of protected health in-  
18           formation about the individual maintained by a  
19           health information trustee with the intent to sell,  
20           transfer, or use such authorization for profit or  
21           monetary gain;

22           and knowingly sells, transfers, or uses such information  
23           or authorization for profit or monetary gain shall be fined  
24           under this title or imprisoned not more than 10 years, or  
25           both.

1 **“§ 1534. Knowing and unlawful obtaining of pro-**  
2 **tected health information**

3 “Whoever knowingly obtains protected health infor-  
4 mation from a health information trustee in violation of  
5 the Fair Health Information Practices Act of 1997, know-  
6 ing that such obtaining is unlawful, shall be fined under  
7 this title or imprisoned not more than 5 years, or both.

8 **“§ 1535. Monetary gain from knowing and unlawful**  
9 **obtaining of protected health information**

10 “Whoever knowingly—

11 “(1) obtains protected health information from  
12 a health information trustee in violation of the Fair  
13 Health Information Practices Act of 1997, knowing  
14 that such obtaining is unlawful and with the intent  
15 to sell, transfer, or use such information for profit  
16 or monetary gain; and

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

19 shall be fined under this title or imprisoned not more than  
20 10 years, or both.

21 **“§ 1536. Knowing and unlawful use or disclosure of**  
22 **protected health information**

23 “Whoever knowingly uses or discloses protected  
24 health information in violation of the Fair Health Infor-  
25 mation Practices Act of 1997, knowing that such use or



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

3 **“§ 1537. Monetary gain from knowing and unlawful**  
 4 **sale, transfer, or use of protected health**  
 5 **information**

6 “Whoever knowingly sells, transfers, or uses pro-  
 7 tected health information in violation of the Fair Health  
 8 Information Practices Act of 1997, knowing that such  
 9 sale, transfer, or use is unlawful, shall be fined under this  
 10 title or imprisoned not more than 10 years, or both.”.

11 (b) CLERICAL AMENDMENT.—The table of chapters  
 12 for part I of title 18, United States Code, is amended by  
 13 inserting after the item relating to chapter 73 the  
 14 following:

**“74. Obtaining protected health information ..... 1531”.**

15 **TITLE II—AMENDMENTS TO**  
 16 **TITLE 5, UNITED STATES CODE**

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

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

21 “(w) MEDICAL EXEMPTIONS.—The head of an agen-  
 22 cy that is a health information trustee (as defined in sec-  
 23 tion 3(b)(5) of the Fair Health Information Practices Act  
 24 of 1997) shall promulgate rules, in accordance with the

1 requirements (including general notice) of subsections  
 2 (b)(1), (b)(2), (b)(3), (c), and (e) of section 553 of this  
 3 title, to exempt a system of records within the agency, to  
 4 the extent that the system of records contains protected  
 5 health information (as defined in section 3(a)(3) of such  
 6 Act), from all provisions of this section except subsections  
 7 (e)(1), (e)(2), subparagraphs (A) through (C) and (E)  
 8 through (I) of subsection (e)(4), and subsections (e)(5),  
 9 (e)(6), (e)(9), (e)(12), (l), (n), (o), (p), (q), (r), and (u).”.

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

14 **TITLE III—REGULATIONS, RE-**  
 15 **SEARCH, AND EDUCATION;**  
 16 **EFFECTIVE DATES; APPLICA-**  
 17 **BILITY; AND RELATIONSHIP**  
 18 **TO OTHER LAWS**

19 **SEC. 301. REGULATIONS; RESEARCH AND EDUCATION.**

20 (a) REGULATIONS.—Not later than July 1, 1999, the  
 21 Secretary shall prescribe regulations to carry out this Act.

22 (b) RESEARCH AND TECHNICAL SUPPORT.—The  
 23 Secretary may sponsor—

24 (1) research relating to the privacy and security  
 25 of protected health information;

1           (2) the development of consent forms governing  
2 disclosure of such information; and

3           (3) the development of technology to implement  
4 standards regarding such information.

5       (c) EDUCATION.—The Secretary shall establish edu-  
6 cation and awareness programs—

7           (1) to foster adequate security practices by  
8 health information trustees;

9           (2) to train personnel of health information  
10 trustees respecting the duties of such personnel with  
11 respect to protected health information; and

12          (3) to inform individuals and employers who  
13 purchase health care respecting their rights with re-  
14 spect to such information.

15       (d) OFFICE OF INFORMATION PRIVACY.—

16           (1) ESTABLISHMENT.—There is established in  
17 the Department of Health and Human Services,  
18 within the Office of the Secretary, an Office of In-  
19 formation Privacy. The Office of Information Pri-  
20 vacy shall be headed by a Director, who shall also  
21 be the Privacy Adviser of the Department of Health  
22 and Human Services. The Director shall be the prin-  
23 cipal adviser to the Secretary on the effect of the use  
24 and disclosure of personally-identifiable information  
25 on the privacy of individuals.

1           (2) DUTIES.—The Director of the Office of In-  
2           formation Privacy shall—

3                   (A) monitor and participate in the develop-  
4                   ment of regulations under this Act;

5                   (B) monitor the implementation of this Act  
6                   within the Department of Health and Human  
7                   Services;

8                   (C) advise the Secretary of the effects of  
9                   current activities and proposed statutory, regu-  
10                  latory, administrative, and budgetary actions on  
11                  the information privacy of individuals;

12                  (D) monitor the implementation within the  
13                  Department of Health and Human Services of  
14                  laws and policies affecting the confidentiality of  
15                  personally-identifiable health information or  
16                  other personally-identifiable information;

17                  (E) advise the Secretary on the implica-  
18                  tions for privacy of automated systems for the  
19                  collection, storage, analysis, or transfer of per-  
20                  sonally-identifiable health information or other  
21                  personally-identifiable information;

22                  (F) engage in, or commission, research and  
23                  technical studies on the implications of policies  
24                  and practices for information privacy promul-  
25                  gated by the Secretary;

1 (G) serve as a point of contact within the  
2 Department of Health and Human Services for  
3 persons, such as other agencies of the Federal  
4 Government, States, foreign governments, inter-  
5 national organizations, privacy and consumer  
6 advocacy organizations, businesses, nonprofit  
7 organizations, and individuals, interested in the  
8 effects on privacy of the collection, mainte-  
9 nance, use, and disclosure of personally-identifi-  
10 able health information or other personally-  
11 identifiable information; and

12 (H) report from time to time to the Sec-  
13 retary, the Congress, and the public on privacy  
14 matters.

15 **SEC. 302. EFFECTIVE DATES.**

16 (a) IN GENERAL.—Except as provided in subsection  
17 (b), this Act, and the amendments made by this Act, shall  
18 take effect on January 1, 2000.

19 (b) PROVISIONS EFFECTIVE IMMEDIATELY.—

20 (1) IN GENERAL.—A provision of this Act shall  
21 take effect on the date of the enactment of this Act  
22 if the provision—

23 (A) imposes a duty on the Secretary to de-  
24 velop, establish, or promulgate regulations,

1 guidelines, notices, statements, or education  
2 and awareness programs; or

3 (B) authorizes the Secretary to sponsor re-  
4 search or the development of forms or tech-  
5 nology.

6 (2) OFFICE OF INFORMATION PRIVACY.—Sec-  
7 tion 301(d) (relating to the Office of Information  
8 Privacy) shall take effect on the date of the enact-  
9 ment of this Act.

10 **SEC. 303. APPLICABILITY.**

11 (a) PROTECTED HEALTH INFORMATION.—Except as  
12 provided in subsections (b) and (c), the provisions of this  
13 Act shall apply to any protected health information that  
14 is received, created, used, maintained, or disclosed by a  
15 health information trustee in a State on or after January  
16 1, 2000, regardless of whether the information existed or  
17 was disclosed prior to such date.

18 (b) EXCEPTION.—

19 (1) IN GENERAL.—The provisions of this Act  
20 shall not apply to a trustee described in paragraph  
21 (2), except with respect to protected health informa-  
22 tion that is received by the trustee on or after Janu-  
23 ary 1, 2000.

24 (2) APPLICABILITY.—A trustee referred to in  
25 paragraph (1) is—

1 (A) a health researcher; or

2 (B) a person who, with respect to specific  
3 protected health information, received the infor-  
4 mation—

5 (i) pursuant to—

6 (I) section 117 (relating to emer-  
7 gency circumstances);

8 (II) section 118 (relating to judi-  
9 cial and administrative purposes);

10 (III) section 119 (relating to law  
11 enforcement); or

12 (IV) section 120 (relating to sub-  
13 poenas, warrants, and search war-  
14 rants); or

15 (ii) while acting in whole or in part in  
16 the capacity of an officer or employee of a  
17 person described in clause (i).

18 (c) AUTHORIZATIONS FOR DISCLOSURES.—An au-  
19 thorization for the disclosure of protected health informa-  
20 tion about a protected individual that is executed by the  
21 individual before January 1, 2000, and is recognized and  
22 valid under State law on December 31, 1999, shall remain  
23 valid and shall not be subject to the requirements of sec-  
24 tion 112 until January 1, 2001, or the occurrence of the

1 date or event (if any) specified in the authorization upon  
2 which the authorization expires, whichever occurs earlier.

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

4 (a) STATE LAW.—Except as otherwise provided in  
5 subsections (b), (c), (d), (e), and (g), a State may not es-  
6 tablish, continue in effect, or enforce any State law to the  
7 extent that the law is inconsistent with, or imposes addi-  
8 tional requirements with respect to, any of the following:

9 (1) A duty of a health information trustee  
10 under this Act.

11 (2) An authority of a health information trustee  
12 under this Act to disclose protected health informa-  
13 tion.

14 (3) A provision of subtitle C (relating to access  
15 procedures and challenge rights), subtitle D (mis-  
16 cellaneous provisions), or subtitle E (relating to en-  
17 forcement).

18 (b) LAWS RELATING TO PUBLIC HEALTH AND MEN-  
19 TAL HEALTH.—This Act does not preempt, supersede, or  
20 modify the operation of any State law regarding public  
21 health or mental health to the extent that the law prohibits  
22 or regulates a disclosure of protected health information  
23 that is permitted under this Act.



1       (c) CRIMINAL PENALTIES.—A State may establish  
2 and enforce criminal penalties with respect to a failure to  
3 comply with a provision of this Act.

4       (d) REQUIREMENTS ON STATE AGENCIES.—A State  
5 may establish, continue in effect, and enforce any State  
6 law to the extent that the law imposes on a judicial, legis-  
7 lative, or executive agency of the State a requirement, lim-  
8 itation, or procedure with respect to the use or disclosure  
9 of protected health information that is in addition to the  
10 requirements, limitations, and procedures imposed under  
11 this Act.

12       (e) PRIVILEGES.—A privilege that a person has  
13 under law in a court of a State or the United States or  
14 under the rules of any agency of a State or the United  
15 States may not be diminished, waived, or otherwise af-  
16 fected by—

17           (1) the execution by a protected individual of an  
18 authorization for disclosure of protected health in-  
19 formation under this Act, if the authorization is exe-  
20 cuted for the purpose of receiving health care or pro-  
21 viding for the payment for health care; or

22           (2) any provision of this Act that authorizes the  
23 disclosure of protected health information for the  
24 purpose of receiving health care or providing for the  
25 payment for health care.

1       (f) DEPARTMENT OF VETERANS AFFAIRS.—The lim-  
2   itations on use and disclosure of protected health informa-  
3   tion under this Act shall not be construed to prevent any  
4   exchange of such information within and among compo-  
5   nents of the Department of Veterans Affairs that deter-  
6   mine eligibility for or entitlement to, or that provide, bene-  
7   fits under laws administered by the Secretary of Veterans  
8   Affairs.

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

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

14           (2) Any law requiring the reporting of abuse or  
15       neglect information about any individual.

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

20           (4) The Americans with Disabilities Act of  
21       1990.

22           (5) Any Federal or State statute that estab-  
23       lishes a privilege for records used in health profes-  
24       sional peer review activities.

25       (h) SECRETARIAL AUTHORITY.—

1           (1) SECRETARY OF HEALTH AND HUMAN SERV-  
2           ICES.—A provision of this Act does not preempt, su-  
3           persede, or modify the operation of section 543 of  
4           the Public Health Service Act, except to the extent  
5           that the Secretary of Health and Human Services  
6           determines through regulations promulgated by such  
7           Secretary that the provision provides greater protec-  
8           tion for protected health information, and the rights  
9           of protected individuals, than is provided under such  
10          section 543.

11          (2) SECRETARY OF VETERANS AFFAIRS.—A  
12          provision of this Act does not preempt, supersede, or  
13          modify the operation of section 7332 of title 38,  
14          United States Code, except to the extent that the  
15          Secretary of Veterans Affairs determines through  
16          regulations promulgated by such Secretary that the  
17          provision provides greater protection for protected  
18          health information, and the rights of protected indi-  
19          viduals, than is provided under such section 7332.

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