

107TH CONGRESS  
2D SESSION

# S. 3064

To prohibit the use of patient databases for marketing without the express  
consent of the patient.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 7, 2002

Mr. NELSON of Florida introduced the following bill; which was read twice and  
referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To prohibit the use of patient databases for marketing  
without the express consent of the patient.

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.**

4       This Act may be cited as the “Health Records Con-  
5 fidentiality Act of 2002”.

6 **SEC. 2. DEFINITIONS.**

7       In this Act:

8           (1) INDIVIDUALLY IDENTIFIABLE HEALTH IN-  
9       FORMATION.—The term “individually identifiable  
10      health information” means information that is a

1       subset of health information, including demographic  
2       information collected from an individual, that—

3               (A) is created or received from a health  
4       care provider, health plan, employer, or health  
5       care clearinghouse;

6               (B) relates to the past, present, or future  
7       physical or mental health or condition of an in-  
8       dividual, the provision of health care to an indi-  
9       vidual, or the past, present or future payment  
10      for the provision of health care to an individual;  
11      and

12               (C)(i) identifies the individual; or  
13               (ii) with respect to which there is a reason-  
14       able basis to believe that the information can be  
15       used to identify the individual.

16               (2) MARKETING.—The term “marketing”  
17       means to make a communication about a product or  
18       service to encourage recipients of the communication  
19       to purchase or use the product or service, but does  
20       not include communications made as part of the  
21       treatment of a patient for the purpose of furthering  
22       treatment unless the covered entity receives direct or  
23       indirect remuneration from a third party for making  
24       the communication.

1 **SEC. 3. PROTECTION OF PRIVATE HEALTH INFORMATION.**

2        Except in accordance with section 4, a health care  
3 provider, pharmacy, health researcher, health plan, health  
4 oversight agency, public health authority, employer, health  
5 or life insurer, or school or university shall not—

6                (1) disclose individually identifiable health in-  
7 formation to an entity for marketing the products or  
8 services of such entity; or

9                (2) use individually identifiable health informa-  
10 tion in its possession to provide marketing services  
11 to any entity.

12 **SEC. 4. NOTICE AND CONSENT REQUIREMENTS.**

13        A health care provider, pharmacy, health researcher,  
14 health plan, health oversight agency, public health author-  
15 ity, employer, health or life insurer, or school or university  
16 may provide marketing services to a pharmaceutical com-  
17 pany if such health care entity—

18                (1) provides clear and conspicuous notice to the  
19 individual involved concerning its disclosure prac-  
20 tices for all individually identifiable health informa-  
21 tion collected or created with regard to the indi-  
22 vidual; and

23                (2) obtains the consent of the individual in-  
24 volved to use the information and that consent is  
25 manifested by an affirmative act in a written com-  
26 munication which only references and applies to the

- 1 specific marketing purpose for which the information
- 2 is to be used.

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