

107TH CONGRESS
2D SESSION

S. 3064

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

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

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.

