

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 661
Commerce Committee Substitute Adopted 5/1/03

Short Title: Health Care Information Privacy.

(Public)

Sponsors:

Referred to:

April 1, 2003

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT HEALTH INFORMATION PRIVACY BY PROHIBITING
3 USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION FOR
4 PURPOSES OF MARKETING WITHOUT WRITTEN AUTHORIZATION OF
5 THE INDIVIDUAL.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** The General Statutes are amended by adding the following
8 new Chapter to read:

9 **"Chapter 132A.**
10 **"Privacy of Health Information.**

11 **"Article 1.**

12 **"Use or Disclosure of Protected Health Information.**

13 **"§ 132A-1. Purpose.**

14 The purpose of this Article is to provide greater patient privacy protections regarding
15 the use or disclosure of protected health information for marketing purposes than are
16 provided under the Health Insurance Portability and Accountability Act and Privacy
17 Standards and regulations adopted thereunder.

18 **"§ 132A-2. Definitions.**

19 (a) Unless otherwise defined in this Article, each term used in this Article has the
20 meaning and application assigned by the Health Insurance Portability and
21 Accountability Act and Privacy Standards.

22 (b) As used in this Article:

23 (1) 'Health Insurance Portability and Accountability Act and Privacy
24 Standards' means the privacy requirements of the Administrative
25 Simplification subtitle of the Health Insurance Portability Act of 1996
26 (Pub. L. 104-191) and the final rules adopted December 28, 2000, as
27 modified August 14, 2002, and any subsequent amendments.

28 (2) 'Marketing' or 'to market' means to make a communication about a
29 product or service to encourage recipients of the communication to

1 purchase or use the product of service, but does not include
2 communications:

- 3 a. Made as part of the treatment of an individual for the purpose of
4 furthering treatment;
5 b. For care coordination and managing the treatment of the
6 individual, including communications made for the purpose of
7 furthering the individual's adherence to a prescription drug
8 medication or for the purpose of recommending alternative
9 treatments or settings of care to the individual, and including
10 questionnaires and surveys sent directly to or used directly with
11 individuals; or
12 c. By a health benefit plan to its enrollees about the plan of
13 benefits and replacements or enhancements to the benefit plan,
14 the network of providers, or value-added services available to
15 its enrollees.

16 **"§ 132A-3. Protection of private health information.**

17 (a) A covered entity shall not, in the marketing of its products or services,
18 disclose protected health information or use protected health information in its
19 possession to market the products or service of another entity.

20 (b) A covered entity may use protected health information to market its
21 nonhealth-related products and services to an individual only if the covered entity:

- 22 (1) Obtains the consent of the individual; and
23 (2) Provides clear and conspicuous notice to the individual involved
24 concerning its disclosure practices for that individual's protected health
25 information.

26 (c) Applicability. – This Article does not affect the validity of another law of this
27 State that provides greater confidentiality for information made confidential by this
28 Article.

29 **"§ 132A-4. Enforcement.**

30 (a) Injunctive Relief. – The Attorney General of this State may institute an action
31 for injunctive relief to restrain a violation of this Article.

32 (b) Civil Penalties. – In addition to the injunctive relief provided by this section,
33 the Attorney General may institute an action for civil penalties against a covered entity
34 for a violation of this Article. A civil penalty assessed under this section may not exceed
35 five thousand dollars (\$5,000) for each violation. If the court in which an action under
36 this subsection is pending finds that the violations have occurred with a frequency as to
37 constitute a pattern or practice, the court may assess a civil penalty not to exceed two
38 hundred fifty thousand dollars (\$250,000).

39 (c) Availability of Other Remedies. – This Article does not affect any right of a
40 person under other law to bring a cause of action or otherwise seek relief with respect to
41 conduct that is a violation of this Article."

42 **SECTION 2.** This act becomes effective January 1, 2004.