

SENATE No. 19

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act Protecting the Confidentiality of Patient Prescription Records..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 94C of the general laws, as most recently appearing in the 2006
2 Official Edition, is hereby amended by inserting after section 34, the following new section: -

3 Section 34A. Unlawful Use of Prescription Information.

4 (a) No person, including any pharmacist registered under section 24 of chapter 112, a
5 carrier authorized to transact accident and health insurance under chapter 175, a non-profit
6 hospital service corporation licensed under chapter 176A, a non-profit medical service
7 corporation licensed under 176B, a health maintenance corporation licensed under chapter 176G,
8 a preferred provider arrangement licensed under 176I, an electronic transmission intermediary,
9 retail, mail order, or Internet pharmacy or other similar entity, shall license, transfer, use, sell or
10 lease records relative to prescription information containing patient-identifiable and prescriber-
11 identifiable data, for any commercial purpose, except for the limited purposes of pharmacy
12 reimbursement; formulary compliance; care management; utilization review by a health care
13 provider, the patient’s insurance provider or the agent of either; health care research; or as
14 otherwise provided by law. For purpose of this section, a prescriber is any health care

15 professional legally authorized to issue prescriptions for medication. Commercial purpose
16 includes, but is not limited to, advertising, marketing, promotion, or any activity that could be
17 used to influence sales or market share of a pharmaceutical product, influence or evaluate the
18 prescribing behavior of an individual health care professional, or evaluate the effectiveness of a
19 professional pharmaceutical detailing sales force. Electronic transmission intermediary means an
20 entity that provides the infrastructure that connects the computer systems or other electronic
21 devices used by and between health care practitioners, prescribers, pharmacies, healthcare
22 facilities, pharmacy benefit managers and agents and contractors of those persons and entities in
23 order to facilitate the secure transmission of an individual's prescription drug order, refill,
24 authorization request, claim, payment or other prescription drug information. Nothing in this
25 section shall prohibit the dispensing of prescription medications to a patient or to the patient's
26 authorized representative; the transmission of prescription information between an authorized
27 prescriber and a licensed pharmacy; the transfer of prescription information between licensed
28 pharmacies; the transfer of prescription records that may occur in the event a pharmacy
29 ownership is changed or transferred; care management educational communications provided to
30 a patient about the patient's health condition, adherence to a prescribed course of therapy or
31 other information about the drug being dispensed, treatment options, or clinical trials. Nothing in
32 this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-
33 identified data by zip code, geographic region, or medical specialty for commercial purposes.

34 (b) Whoever violates any provision of this section shall be punished by imprisonment in
35 the state prison for not more than four years or in a house of correction for not more than two and
36 one half years or by a fine of not more than twenty thousand dollars, or by both such fine and
37 imprisonment. Whoever violates any provision of this section after one or more prior convictions

38 of a violation of this section, or of a felony under any other provision of this chapter, or under a
39 provision of prior law relative to the sale or manufacture of a narcotic drug or a harmful drug as
40 defined in said earlier law shall be punished by imprisonment in the state prison for not more
41 than eight years or in a jail or house of correction for not more than two and one half years, or by
42 a fine of not more than thirty thousand dollars or by both such fine and imprisonment.

43 (c) In addition to other appropriate remedies under this chapter, a violation of this section
44 is an unfair or deceptive act or practice within the meaning of section 2 of chapter 93A of the
45 general laws. Any right or remedy set forth in chapter 93A may be used to enforce the provisions
46 of this section.

47 SECTION 2. This act shall take effect upon passage.