

SENATE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act protecting individual rights to protected health information.

PETITION OF:

NAME:

Julian Cyr

DISTRICT/ADDRESS:

Cape and Islands

SENATE No.

By Mr. Cyr, a petition (accompanied by bill) (subject to Joint Rule 12) of Julian Cyr for legislation to protect individual rights to protected health information. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act protecting individual rights to protected health information.

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

1 The General Laws are hereby amended by inserting after chapter 111O the following
2 chapter:-

3 Chapter 111P. Exchange of protected health information

4 Section 1. Definitions.

5 For purposes of this chapter the following words shall, unless the context clearly
6 indicates otherwise, have the following meanings:-

7 “Authorization”, an authorization that (i) meets the requirements for a valid authorization
8 as prescribed by 45 C.F.R. 164.508; and (ii) includes a statement informing the individual that
9 the individual may elect to receive a share of any remuneration received by the covered entity,
10 business associate, subcontractor or other third party, in exchange for authorizing the commercial
11 sale of the individual’s protected health information, health information or de-identified data.

12 “Business associate”, as defined in 45 C.F.R. 160.103.

13 “Commercial sale”, the disclosure of health information, including de-identified data, by
14 a covered entity, business associate, subcontractor or other third party, if the covered entity,
15 business associate, subcontractor or other third party directly or in- directly receives
16 remuneration from or on behalf of the recipient of the health information in exchange for the
17 information; provided however, that “commercial sale” does not include the disclosure of health
18 information by a covered entity, business associate, subcontractor or other third party for any of
19 the following purposes:

20 (i) public health activities as described in 45 C.F.R. 164.512(b);

21 (ii) research, as described in 45 C.F.R. 164.512(i) and 164.514(e);

22 (iii) judicial and administrative proceedings as described in 45 C.F.R. 164.512(e);

23 (iv) Treatment, payment or health care operations as described in 45 C.F.R. 164.506(a)
24 and (c);

25 (v) sale, transfer, merger or consolidation of all or part of the covered entity, business
26 associate, subcontractor or other third party and for related due diligence;

27 (vi) performance of services delineated in a contract or other arrangement, as described in
28 45 C.F.R. 164.502(e) or 164.504(e), in which the only remuneration provided is to a covered
29 entity, business associate, subcontractor or other third party for the performance of the services;

30 (vii) activities of a health oversight agency as described in 45 C.F.R. 164.512(d);

31 (viii) law enforcement activities as described in 45 C.F.R. 164.512(f);

32 (ix) to avert a serious threat to health or safety as described in 45 C.F.R. 164.512(j);
33 (x) specialized governmental functions as described in 45 C.F.R. 164.512(k);
34 (xi) workers' compensation as described in 45 C.F.R. 164.512(l);
35 (xii) to address fraud, security or technical issues as may be reasonably necessary to
36 protect the covered entity, business associate, subcontractor or other third party or to protect the
37 individual; or

38 (xiii) when required by law as described in 45 C.F.R. 164.512(a).

39 "Covered entity", as defined in 45 C.F.R. 160.103.

40 "De-identified data", health information that meets the requirements for de-identification
41 of protected health information under 45 C.F.R. 164.514.

42 "Disclosure", the release, transfer, sharing, dissemination or any other communication,
43 whether orally, in writing, electronically or by any other means, of health information to a third
44 party.

45 "Health care operations", as defined in 45 C.F.R. 164.501.

46 "Health information", as defined in 45 C.F.R. 160.103.

47 "Health oversight agency", as defined in 45 C.F.R. 164.501.

48 "Individual", the individual who is the subject of protected health information.

49 "Payment", as defined in 45 C.F.R. 164.501;

50 "Protected health information" as defined in 45 C.F.R. 160.103.

51 “Required by law” as defined in 45 C.F.R. 164.103.

52 “Research”, as defined in 45 C.F.R. 164.501.

53 “Subcontractor”, as defined in 45 C.F.R. 160.103.

54 “Third party”, a person who is not a covered entity, business associate or subcontractor
55 authorized to do business in this state and who is not the individual.

56 “Treatment”, as defined in 45 C.F.R. 164.501.

57 Section 2. (1) A covered entity, business associate, subcontractor or other third party
58 doing business in this state may not engage in the commercial sale of protected health
59 information, health information or de-identified data without first obtaining a signed
60 authorization from the individual.

61 (2) A covered entity, business associate, subcontractor or other third party doing business
62 in this state may not discriminate against or penalize an individual who declines to sign an
63 authorization or who elects to receive remuneration in exchange for signing an authorization.

64 (3) A covered entity, business associate, subcontractor or other third party shall provide a
65 share of any remuneration received by the covered entity, business associate, subcontractor or
66 other third party to an individual who elects to receive remuneration in exchange for signing an
67 authorization.

68 (4) A third party that has not obtained a signed authorization from the individual may not
69 engage in the commercial sale of any protected health information, health information or de-
70 identified data purchased or otherwise obtained from a covered entity, business associate or
71 subcontractor without first documenting that a signed authorization has been obtained by the

72 covered entity, business associate or subcontractor in accordance with subsection (1) of this
73 section.

74 (5) This section does not apply to a public body, a federal agency or the business
75 associates or subcontractors of a public body or federal agency with respect to health information
76 created, received, transmitted or maintained by the business associate or subcontractor on behalf
77 of the public body or federal agency.