

SENATE No. 530

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 the confidentiality of patient prescription records .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Richard T. Moore</i>	
<i>Robert M. Koczera</i>	<i>11th Bristol</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>James B. Eldridge</i>	
<i>Marc R. Pacheco</i>	
<i>Karen E. Spilka</i>	
<i>Bruce E. Tarr</i>	

SENATE No. 530

By Mr. Moore, a petition (accompanied by bill, Senate, No. 530) of Richard T. Moore, Robert M. Koczera, James J. Dwyer, James B. Eldridge and other members of the General Court for legislation to protect the confidentiality of patient prescription records. Health Care Financing.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 19 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 2008
2 Official Edition, is hereby amended by inserting after section 34, the following new section: -

3 Section 34A. Unlawful Use of Prescription Information.

4 It is the intent of the legislature to advance the state interests in cost containment and the
5 protection of public health by regulating the flow of patient-identifiable and prescriber-
6 identifiable data from the collectors of such data to data miners for commercial purposes,
7 including, but not limited to, advertising , marketing, promotion, or any activity that could be
8 used to influence sales or market share of a pharmaceutical product, influence or evaluate the
9 prescribing behavior of an individual health care professional, or evaluate the effectiveness of a

10 professional pharmaceutical detailing sales force. Nothing in this section shall be interpreted to
11 regulate conduct that takes place wholly outside the commonwealth.

12 (a) No person, including any pharmacist registered under section 24 of chapter 112, a
13 carrier authorized to transact accident and health insurance under chapter 175, a non-profit
14 hospital service corporation licensed under chapter 176A, a non-profit medical service
15 corporation licensed under 176B, a health maintenance corporation licensed under chapter 176G,
16 a preferred provider arrangement licensed under 176I, an electronic transmission intermediary,
17 retail, mail order, or Internet pharmacy or other similar entity, a third party administrator, a
18 pharmacy benefit manager or other similar entity with claims data, eligibility data, provider files
19 and other information relating to health care provided by health care providers in the
20 commonwealth, or an entity that offers a policy certificate or contract that provides coverage
21 solely for dental care services or vision care services, shall license, transfer, use, sell or lease
22 records relative to prescription information containing patient-identifiable and prescriber-
23 identifiable data, for any commercial purpose, except for the limited purposes of pharmacy
24 reimbursement; formulary compliance; care management; utilization review by a health care
25 provider, the patient's insurance provider or the agent of either; health care research; or as
26 otherwise provided by law. For purpose of this section, a prescriber is any health care
27 professional legally authorized to issue prescriptions for medication. Commercial purpose
28 includes, but is not limited to, advertising, marketing, promotion, or any activity that could be
29 used to influence sales or market share of a pharmaceutical product, influence or evaluate the
30 prescribing behavior of an individual health care professional, or evaluate the effectiveness of a
31 professional pharmaceutical detailing sales force. Electronic transmission intermediary means
32 an entity that provides the infrastructure that connects the computer systems or other electronic

33 devices used by and between health care practitioners, prescribers, pharmacies, healthcare
34 facilities, pharmacy benefit managers and agents and contractors of those persons and entities in
35 order to facilitate the secure transmission of an individual's prescription drug order, refill,
36 authorization request, claim, payment or other prescription drug information. Nothing in this
37 section shall prohibit the dispensing of prescription medications to a patient or to the patient's
38 authorized representative; the transmission of prescription information between an authorized
39 prescriber and a licensed pharmacy; the transfer of prescription information between licensed
40 pharmacies; the transfer of prescription records that may occur in the event a pharmacy
41 ownership is changed or transferred; care management educational communications provided to
42 a patient about the patient's health condition, adherence to a prescribed course of therapy or
43 other information about the drug being dispensed, treatment options, or clinical trials. Nothing
44 in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-
45 identified data by zip code, geographic region, or medical specialty for commercial purposes.

46 (b) Whoever violates any provision of this section shall be punished by imprisonment in
47 the state prison for not more than four years or in a house of correction for not more than two and
48 one half years or by a fine of not more than twenty thousand dollars, or by both such fine and
49 imprisonment. Whoever violates any provision of this section after one or more prior
50 convictions of a violation of this section, or of a felony under any other provision of this chapter,
51 or under a provision of prior law relative to the sale or manufacture of a narcotic drug or a
52 harmful drug as defined in said earlier law shall be punished by imprisonment in the state prison
53 for not more than eight years or in a jail or house of correction for not more than two and one
54 half years, or by a fine of not more than thirty thousand dollars or by both such fine and
55 imprisonment.

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

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