

ASSEMBLY, No. 1727

STATE OF NEW JERSEY

INTRODUCED MARCH 18, 1996

By Assemblymen COHEN and IMPREVEDUTO

1 AN ACT concerning personal privacy with respect to medical records
2 and other health care information, and supplementing Title 26 of
3 the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the "Medical
9 Records Confidentiality Act."

10
11 2. The Legislature finds and declares that:

12 a. It is in the public interest to establish strong and effective
13 mechanisms to protect the privacy of persons with respect to
14 personally identifiable health care information that is created or
15 maintained as part of health treatment, diagnosis, enrollment, payment,
16 testing or research processes.

17 b. It is also in the public interest to promote the efficiency and
18 security of the health information infrastructure so that members of the
19 health care community may more effectively exchange and transfer
20 health information in a manner that will ensure the confidentiality of
21 personally identifiable health information; and

22 c. It is therefore necessary to enact such provisions into law in this
23 State and to establish strong and effective remedies for violations of
24 these provisions.

25

26 3. As used in this act:

27 "Certified health information service" means a health information
28 service that receives personally identifiable health information for the
29 purpose of creating nonidentifiable health information and has been
30 certified by the commissioner pursuant to section 12 of this act.

31 "Certified institutional review board" means an institutional review
32 board that has been certified by the commissioner pursuant to section
33 17 of this act.

34 "Commissioner" means the Commissioner of Health.

35 "Disclose" means to release, transfer or otherwise divulge protected
36 health information to any person other than the individual who is the
37 subject of the information.

1 "Health care" means preventive, diagnostic, therapeutic,
2 rehabilitative, maintenance or palliative care, counseling, service or
3 procedure with respect to an individual's physical or mental condition,
4 or affecting the structure or function of the human body or any part
5 thereof; or the sale or dispensing of a drug, device, equipment or other
6 item to an individual or for the use of an individual pursuant to a
7 prescription.

8 "Health care provider" means a person who, with respect to a
9 specific item of protected health information, receives, creates, uses,
10 maintains or discloses the information while acting in whole or in part
11 in the capacity of: a person who is licensed, certified, registered or
12 otherwise authorized by law to provide an item or service that
13 constitutes health care in the ordinary course of business or practice
14 of a profession; a State or federal program that directly provides items
15 or services that constitute health care to beneficiaries of the program;
16 or an officer or employee of such a person or program.

17 "Health information service" means a person who: uses protected
18 health information to provide services to health information trustees
19 for purposes authorized pursuant to this act, facilitates the transfer and
20 exchange of protected health information between health information
21 trustees, processes protected health information into standard format
22 for transfer and exchanges between health information trustees,
23 facilitates authorized access to protected health information, or
24 transforms protected health information into nonidentifiable health
25 information.

26 "Health information trustee" means a health care provider, health
27 plan, health oversight agency, health researcher, public health
28 authority, employer, insurer, school or university, or health
29 information service to the extent that it creates, receives, obtains,
30 maintains, uses or transmits protected health information; a person
31 who obtains protected health information pursuant to this act; or an
32 employee, agent or contractor of a person herein defined as a health
33 information trustee insofar as that employee, agent or contractor
34 creates, receives, obtains, maintains, uses or transmits protected health
35 information.

36 "Health oversight agency" means an agency, person or other entity
37 which: performs or oversees the performance of an assessment,
38 evaluation, determination or investigation relating to the licensing,
39 registration, accreditation or certification of health care providers; or
40 performs or oversees the performance of an assessment, evaluation,
41 determination, investigation or prosecution relating to compliance
42 with legal, fiscal, medical or scientific standards governing the delivery
43 of, or payment for, health care, health services or equipment, or health
44 research, or governing health care fraud or fraudulent claims regarding
45 health care, health services or equipment, or related activities and
46 items; and which agency, person or other entity is a public agency or

1 is acting on behalf of a public agency or pursuant to a requirement of
2 a public agency, or is conducting activities under a State or federal law
3 governing the activities of a health oversight agency.

4 "Health plan" means a health insurance plan, including a hospital or
5 medical service plan, dental or other health service plan or health
6 maintenance organization plan, or other program providing health
7 benefits, whether or not funded through the purchase of insurance.

8 "Health researcher" means a person who receives a specific item of
9 protected health information pursuant to section 17 of this act or while
10 acting in whole or in part in the capacity of an officer or employee of
11 such a person.

12 "Individual representative" means an individual legally empowered
13 to make decisions concerning the provision of health care to an
14 individual who lacks the legal capacity under State law to make these
15 decisions, or the administrator or executor of a decedent's estate.

16 "Law enforcement inquiry" means a lawful investigation or official
17 proceeding inquiring into a violation of, or failure to comply with, a
18 criminal or civil law or any regulation, rule or order issued pursuant to
19 that law.

20 "Protected health information" means information, including
21 demographic information collected from an individual, whether oral or
22 recorded in any form or medium, that is created or received by a health
23 information trustee and relates to an individual's past, present or future
24 physical or mental health or condition, the provision of health care to
25 an individual, or the past, present or future payment for the provision
26 of health care to an individual; and which information identifies an
27 individual, or with respect to which there is a reasonable basis to
28 believe that the information can be used to identify an individual.

29 "Public health authority" means an authority or instrumentality of
30 the United States or this State that is responsible for public health
31 matters and is engaged in such activities as injury reporting, public
32 health, surveillance and public health investigation or intervention.

33 "Writing" means writing in either a paper-based or computer-based
34 form, including electronic signatures.

35

36 4. a. Except as provided in subsection b. of this section, a health
37 information trustee shall permit an individual who is the subject of
38 protected health information or the individual's designee to inspect and
39 copy protected health information concerning the individual, including
40 records created pursuant to section 5 of this act that the trustee
41 maintains. A health information trustee may require an individual to
42 reimburse the trustee for the cost of the inspection and copying.

43 b. A health information trustee shall not be required to permit
44 inspection or copying of protected health information under any of the
45 following conditions:

46 (1) The trustee determines that disclosure of the information could

1 reasonably be expected to endanger the life or physical safety of an
2 individual;

3 (2) The information identifies or could reasonably lead to the
4 identification of a person who provided information under a promise
5 of confidentiality to a health care provider concerning the individual
6 who is the subject of the information; or

7 (3) The information is used by the trustee solely for administrative
8 purposes and not in the provision of health care or the administration
9 of benefits to the individual who is the subject of the information, and
10 has not been disclosed by the health information trustee to another
11 person.

12 c. A health information trustee shall permit inspection and copying
13 under subsection a. of this section of any reasonably segregable
14 portion of a record after deletion of any portion that is exempt under
15 subsection b. of this section.

16 d. A health information trustee shall comply with or deny, with a
17 statement of the reasons for the denial, a request for inspection or
18 copying of protected health information pursuant to his section no
19 later than 30 days after the receipt of the request by the trustee.

20

21 5. a. A health information trustee shall no later than 45 days after
22 the trustee receives from an individual a written request to correct or
23 amend information:

24 (1) make the correction or amendment requested;

25 (2) inform the individual of the correction or amendment that has
26 been made; and

27 (3) make reasonable efforts to inform any person who is identified
28 by the individual, who is not an officer, employer, or agent of the
29 trustee, and to whom the uncorrected or unamended portion of the
30 information was previously disclosed, of the correction or amendment
31 that has been made; or

32 (4) if the trustee does not take the actions required pursuant to this
33 subsection, comply with the provisions of subsection b. of this section.

34 b. If the health information trustee refuses to make the correction
35 or amendment, the trustee shall inform the individual of:

36 (1) the reasons for the refusal to make the correction or
37 amendment;

38 (2) any procedures for further review of the refusal; and

39 (3) the individual's right to file with the trustee a concise statement
40 setting forth the requested correction or amendment and the
41 individual's reasons for disagreeing with the refusal.

42 c. After an individual has filed a statement of disagreement
43 pursuant to paragraph (3) of subsection b. of this section, the health
44 information trustee, in any subsequent disclosure of the disputed
45 portion of the information, shall include a copy of the individual's
46 statement, and may include a concise statement of the reasons for not

1 making the requested correction or amendment.

2 d. The provisions of this section shall not be construed to require
3 a health information trustee to conduct a formal, informal or other
4 hearing or proceeding concerning a request for a correction or
5 amendment to protected health information.

6 e. For the purposes of subsection a. of this section, a correction is
7 deemed to have been made to protected health information when
8 information that has been disputed by an individual has been corrected,
9 clearly marked as incorrect, or supplemented by correct information.

10

11 6. A health information trustee other than a health information
12 service shall provide, in a clear and conspicuous manner, written
13 notice of the trustee's health information practices, including a notice
14 of individual rights with respect to protected health information, on a
15 form and in a manner prescribed by the commissioner.

16

17 7. A health information trustee shall establish and maintain
18 appropriate administrative, technical and physical safeguards to ensure
19 the confidentiality, security, accuracy and integrity of protected health
20 information created, received, obtained, maintained, used or
21 transmitted by the trustee, in accordance with standards established by
22 the commissioner.

23

24 8. A health information trustee shall create and maintain with
25 respect to any protected health information disclosure that is not
26 related to treatment, a record of the disclosure in accordance with
27 regulations adopted by the commissioner, for a period of not less than
28 seven years.

29

30 9. A health information trustee shall not disclose protected health
31 information except as authorized pursuant to this section.

32 a. Protected health information shall not be used or disclosed to
33 any person unless the use or disclosure is compatible with and related
34 to the purposes for which the information was obtained.

35 b. Every disclosure of protected health information by a health
36 information trustee shall be limited to the minimum amount of
37 information necessary to accomplish the purpose for which the
38 information is disclosed.

39 c. Nothing in this section that permits a disclosure of health
40 information shall be construed to require that disclosure.

41 d. Except as provided in this section, a health information trustee
42 shall not disclose protected health information unless the information
43 is clearly identified as protected health information that is subject to
44 this section.

45 e. The commissioner shall adopt regulations protecting information
46 identifying health care providers in order to promote the availability

1 of health care services.

2

3 10. a. A health information trustee may disclose protected health
4 information for purposes of treatment or payment pursuant to an
5 authorization executed by the individual who is the subject of the
6 information, or a person acting for the individual pursuant to State
7 law, if each of the following requirements is met:

8 (1) The authorization is in writing or electronically authenticated,
9 signed by the individual who is the subject of the information, dated,
10 and provided on a form and in a manner prescribed by the
11 commissioner.

12 (2) Separate forms authorizing disclosures for treatment and
13 payment processes are provided to the individual.

14 (3) The information to be disclosed is specified, or is described in
15 the authorization.

16 (4) The trustee who is authorized to disclose the information is
17 specifically identified or is described in the authorization.

18 (5) The person to whom the information is to be disclosed is
19 specifically identified or is described in the authorization.

20 (6) The authorization contains an acknowledgment that the
21 individual who is the subject of the information has the right to revoke
22 or amend the authorization.

23 (7) The authorization contains an acknowledgment that the
24 individual who is the subject of the information has read a statement
25 of the disclosure that the person who receives the protected health
26 information intends to make.

27 (8) The authorization includes a statement that the information will
28 be disclosed solely for a purpose that is compatible with, and related
29 to, the purposes for which the information was collected or received
30 by the trustee.

31 (9) The authorization specifies a date or event upon which the
32 authorization expires.

33 b. (1) Authorization to disclose protected health information
34 pursuant to subsection a. of this section may not be revoked with
35 respect to disclosure of protected health information to permit
36 validation of expenditures for health care that has previously been
37 authorized.

38 (2) A health information trustee who discloses protected health
39 information pursuant to an authorization described in subsection a. of
40 this section that has been revoked shall not be subject to any liability
41 or penalty under this act if the trustee had no actual or constructive
42 notice of the revocation.

43 c. A health information trustee who discloses protected health
44 information pursuant to an authorization under this section shall
45 maintain a copy of the authorization.

1 11. a. A health information trustee may disclose protected health
2 information pursuant to an authorization executed by the individual
3 who is the subject of the information if all of the following conditions
4 are met:

5 (1) The requirements of paragraphs (1) thru (6) of subsection a. of
6 section 10 of this act are satisfied.

7 (2) The statement of intended disclosure shall be in writing, on a
8 form that is separate from the authorization for disclosure, and shall
9 be received by the individual authorizing the disclosure on or before
10 the date the authorization is executed.

11 (3) The authorization is not requested on the same date that the
12 trustee provides health care to the individual requested to provide the
13 authorization.

14 (4) The authorization specifies a date or event upon which the
15 authorization expires, which shall not exceed one year from the date
16 of the execution of the authorization.

17 b. A health information trustee may not condition delivery of
18 treatment or payment for services on the receipt of an authorization
19 described in subsection a. of this section.

20

21 12. A health information trustee may disclose protected health
22 information to a certified health information service for the purpose of
23 creating nonidentifiable health information.

24 The commissioner shall adopt regulations establishing certification
25 requirements for health information services under this act. The
26 regulations shall include requirements that the health information
27 service establish and maintain appropriate administrative, technical and
28 physical safeguards to ensure the confidentiality, security, accuracy
29 and integrity of protected health information.

30 The commissioner shall certify a health information service that
31 meets the certification requirements established by the commissioner
32 pursuant to this section.

33

34 13. a. A health care provider, or a person who receives protected
35 health information pursuant to section 14 of this act, may disclose
36 protected health information regarding an individual to the individual's
37 next-of-kin, to a representative of the individual, or to an individual
38 with whom that individual has a significant personal relationship, if:

39 (1) the individual who is the subject of the information has been
40 notified of the individual's right to object, and has not objected, to the
41 disclosure; is not competent to be notified about the right to object;
42 or exigent circumstances exist such that it would not be practicable to
43 notify the individual of the right to object; and

44 (2) the information disclosed relates to health care currently being
45 provide to that individual.

46

b. (1) Except as provided in paragraph (2) of this subsection, a

1 health information trustee may disclose the information described in
2 subparagraph (b) of this paragraph to any person if:

3 (a) the individual who is the subject of the information:
4 has been notified of the individual's right to object, and has not
5 objected, to the disclosure; is not competent to be notified about the
6 right to object; or exigent circumstances exist such that it would not
7 be practicable to notify the individual of the right to object; and

8 (b) the information consists only of one or more of the following
9 items: the name of the individual who is the subject of the information;
10 the general health status of the individual, described as critical, poor,
11 fair, stable, or satisfactory or in terms denoting similar conditions; and
12 the location of the individual on premises controlled by a provider.

13 (2) If disclosure of the location of the individual reveals specific
14 information about the physical or mental condition of the individual,
15 the individual must expressly authorize the disclosure.

16 c. A health information trustee may disclose protected health
17 information if necessary to assist in the identification of a decedent.
18 The commissioner shall establish by regulation a procedure for
19 obtaining protected health information relating to a decedent when
20 there is no representative for that individual.

21
22 14. A person who receives protected health information pursuant
23 to this act may disclose protected health information in emergency
24 circumstances when necessary to protect the health or safety of an
25 individual from serious imminent harm.

26
27 15. A health information trustee may disclose protected health
28 information to a health oversight agency for an oversight function
29 authorized by law. Protected health information about an individual
30 that is disclosed under this section may not be used in, or disclosed to
31 any person for use in, an administrative, civil, or criminal action or
32 investigation directed against the individual unless the action or
33 investigation arises out of and is directly related to the receipt of
34 health care or payment for health care, or an action involving a
35 fraudulent claim related to health.

36
37 16. A health care provider, health plan, health researcher, public
38 health authority, employer, insurer, school or university, or certified
39 health information network service, or person who receives protected
40 health information pursuant to section 14 of this act, may disclose
41 protected health information to a public health authority or other
42 person authorized by law for use in a legally authorized disease or
43 injury report, public health surveillance, or public health investigation
44 or intervention.

45
46 17. a. A health information trustee may disclose protected health

1 information to a health researcher if a certified institutional review
2 board determines that the research project engaged in by the health
3 researcher requires use of the protected health information for the
4 effectiveness of the project, and is of sufficient importance to
5 outweigh the intrusion into the privacy of the individual who is the
6 subject of the information that would result from the disclosure.

7 b. A person who receives protected health information pursuant to
8 subsection a. of this section shall:

9 (1) remove or destroy, at the earliest opportunity consistent with
10 the purposes of the project, information that would enable an
11 individual to be identified, unless a certified institutional review board
12 has determined that there is a health or research justification to retain
13 the identifiers, and there is an adequate plan to protect the identifiers
14 from disclosure that is inconsistent with this section; and

15 (2) use protected health information solely for purposes of the
16 health research project for which disclosure was authorized by a
17 certified institutional review board pursuant to subsection a. of this
18 section.

19 c. If a health researcher is not located in an academic center, a
20 health care facility or public health agency, a determination required
21 by a certified institutional review board pursuant to subsections a. or
22 b. of this section shall be approved by the commissioner before the
23 determination is issued.

24 d. The commissioner shall adopt regulations establishing
25 certification requirements for institutional review boards under this
26 section, and shall certify an institutional review board that meets those
27 requirements. The regulations shall ensure that institutional review
28 boards certified under this section have the qualifications to assess and
29 protect the confidentiality of research subjects.

30

31 18. a. A health care provider, health plan, health oversight agency,
32 employer, school, university, insurer, or person who receives protected
33 health information pursuant to section 14 of this act, may disclose
34 protected health information:

35 (1) pursuant to court rules or comparable rules of administrative
36 agencies, in connection with litigation or proceedings to which the
37 individual who is the subject of the information is a party and in which
38 the individual has placed his physical or mental condition at issue;

39 (2) to a court, and to others ordered by the court, if the protected
40 health information is developed in response to a court-ordered physical
41 or mental examination; or

42 (3) pursuant to a statute requiring the reporting of specific medical
43 information to law enforcement authorities.

44 b. A person seeking protected health information pursuant to
45 subsection a. of this section:

46 (1) shall notify the individual or the individual's attorney of the

1 request for information;

2 (2) shall provide the health information trustee with a signed
3 document attesting: that the individual has placed his physical or
4 mental condition at issue in litigation or proceedings in which the
5 individual is a party; and the date on which the individual or the
6 individual's attorney was notified under paragraph (1) of this section;
7 and

8 (3) shall not accept any requested protected health information
9 from the trustee until the termination of the 10-day period beginning
10 on the date notice was give pursuant to paragraph (1) of this
11 subsection.

12

13 19. a. A health care provider, health plan, health oversight agency,
14 employer, insurer, school or university, or person who receives
15 protected health information pursuant to section 14 of this act, may
16 disclose protected health information pursuant to this section if the
17 disclosure is pursuant to a subpoena issued on behalf of a party who
18 has complied with the provisions of subsection b. of this section.

19 b. A person may not obtain protected health information about an
20 individual pursuant to a subpoena unless:

21 (1) a copy of the subpoena, together with a notice of the
22 individual's right to challenge the subpoena in accordance with
23 subsection c. of this section, has been served upon the individual on or
24 before the date of return of the subpoena; and

25 (2) 15 days have passed since the date of service on the individual,
26 and within that time period the individual has not indicated a challenge
27 in accordance with subsection c. of this section, or disclosure has been
28 ordered by a court pursuant to subsection c. of this section.

29 c. After service of a copy of the subpoena seeking protected health
30 information pursuant to subsection b. of this section, the individual
31 who is the subject of the protected health information may file in any
32 court of competent jurisdiction a motion to quash the subpoena. The
33 court shall grant a motion to quash unless the respondent demonstrates
34 that there is reasonable ground to believe the information is relevant
35 to a lawsuit or other judicial or administrative proceeding, and that the
36 need of the respondent for the information outweighs the privacy
37 interest of the individual. In the case of a motion to quash in which the
38 individual has substantially prevailed, the court may assess against the
39 respondent a reasonable attorney's fee and other litigation costs,
40 including expert fees, reasonably incurred.

41 In determining whether the need of the respondent for the
42 information outweighs the privacy interest of the individual, the court
43 shall consider:

44 (1) the particular purpose for which the information was collected;

45 (2) the degree to which disclosure of the information would
46 embarrass, injure, or invade the privacy of the individual;

1 (3) the effect of the disclosure on the individual's future health
2 care;

3 (4) the importance of the information to the lawsuit or proceeding;
4 and

5 (5) any other relevant factor.

6

7 20. a. (1) A health information trustee shall disclose protected
8 health information if the disclosure is pursuant to a subpoena issued
9 under the authority of a grand jury, or an administrative subpoena or
10 summons or a judicial subpoena or warrant, which meets the
11 conditions of paragraph (2) of this subsection.

12 (2) A government authority may not obtain protected health
13 information about an individual pursuant to paragraph (1) of this
14 subsection for use in a law enforcement inquiry unless there is
15 probable cause to believe that the information is relevant to a
16 legitimate law enforcement inquiry being conducted by the government
17 authority.

18 (3) A government authority that obtains protected health
19 information about an individual pursuant to a warrant shall, not later
20 than 30 days after the date the warrant was executed, serve the
21 individual with, or mail to the last known address of the individual, a
22 notice that protected health information about the individual was
23 obtained, together with a notice of the individual's right to challenge
24 the warrant.

25 (4) Except as provided in paragraph (5) of this subsection, a
26 government authority may not obtain protected health information
27 about an individual pursuant to a subpoena or summons unless a copy
28 of the subpoena or summons has been served on the individual, if the
29 identity of the individual is known, on or before the date of the return
30 of the subpoena or summons, together with notice of the individual's
31 right to challenge the subpoena or summons. If the identity of the
32 individual is not known at the time the subpoena or summons is
33 served, the individual shall be served not later than 30 days thereafter
34 with notice that protected health information about the individual was
35 obtained together with notice of the individual's right to challenge the
36 subpoena or summons.

37 (5) (a) A government authority may apply ex parte and under seal
38 to an appropriate court to delay, for an initial period of not longer than
39 90 days, service of the notice regarding execution of the warrant as
40 required pursuant to paragraph (3) of this subsection, or a copy of the
41 subpoena as required pursuant to paragraph (4) of this subsection.
42 The government authority may apply to the court for extensions of the
43 delay.

44 (b) The court shall enter an ex parte order delaying or extending
45 the delay of notice, an order prohibiting the disclosure of the request
46 for, or the disclosure of, the protected health information, and an order

1 requiring the disclosure of the protected health information if the court
2 finds that:

3 (i) the inquiry being conducted is within the lawful jurisdiction of
4 the government authority seeking the protected health information;

5 (ii) there is probable cause to believe that the protected health
6 information being sought is relevant to a legitimate law enforcement
7 inquiry;

8 (iii) the government authority's need for the information outweighs
9 the privacy interest of the individual who is the subject of the
10 information; and

11 (iv) there is reasonable ground to believe that receipt of notice by
12 the individual will result in: endangering the life or physical safety of
13 any individual, flight from prosecution, destruction of or tampering
14 with evidence or the information being sought, the intimidation of
15 potential witnesses, or disclosure of the existence or nature of a
16 confidential law enforcement investigation or grand jury investigation
17 that is likely to seriously jeopardize that investigation.

18 (6) Protected health information about an individual that is
19 disclosed pursuant to this section may not be used in, or disclosed to
20 any person for use in, an administrative, civil or criminal action or
21 investigation directed against the individual unless the action or
22 investigation arise out of, or is directly related to, the law enforcement
23 inquiry for which the information was obtained.

24 b. Within 15 days after the date of service of a notice of execution
25 of a warrant or a copy of a subpoena or summons, of a government
26 authority seeking protected health information about an individual
27 pursuant to subsection a. of this section, the individual may file a
28 motion to quash the subpoena or summons. The court shall grant a
29 motion to quash unless the government authority demonstrates there
30 is probable cause to believe the protected health information is
31 relevant to a legitimate law enforcement inquiry being conducted by
32 the government authority and the government authority's need for the
33 information outweighs the privacy interest of the individual. In the
34 case of a motion to quash in which the individual has substantially
35 prevailed, the court may assess against the government authority
36 reasonable attorney's fees and other litigation costs, including expert
37 fees reasonably incurred. A ruling denying a motion to quash under
38 this section shall not be deemed to be a final order, and no
39 interlocutory appeal may be taken therefrom by the individual.

40 c. A health information trustee may disclose protected health
41 information to a law enforcement agency if the information is
42 requested for use in an investigation or prosecution of a health
43 information trustee, in the identification of a victim or witness in a law
44 enforcement inquiry, or in connection with the investigation of
45 criminal activity committed against the trustee or on premises
46 controlled by the trustee.

1 21. A health information trustee whom the commissioner
2 determines has substantially and materially failed to comply with the
3 provisions of this act shall be subject, in addition to any other penalties
4 that may be prescribed by law, to: a civil penalty of not more than
5 \$10,000 for each such violation, but not to exceed \$50,000 in the
6 aggregate for multiple violations; or a civil penalty of not more than
7 \$250,000, if the commissioner finds that these violations have
8 occurred with such frequency as to constitute a general business
9 practice.

10 The penalty shall be sued for and collected in the name of the
11 Commissioner of Health in a summary proceeding in accordance with
12 "the penalty enforcement law," N.J.S.2A:58-1 et seq.

13
14 22. a. An individual who is aggrieved by conduct in violation of
15 the provisions of this act may bring a civil action to recover such
16 preliminary and equitable relief as the court determines to be
17 appropriate, the greater of actual damages or liquidated damages of
18 \$5,000, and punitive damages. In case of a civil action brought
19 pursuant to this section in which the individual has substantially
20 prevailed, the court may assess against the respondent a reasonable
21 attorney's fee and other litigation costs, including expert fees,
22 reasonably incurred.

23 No action may be commenced under this section more than three
24 years after the date on which the violation was or should reasonably
25 have been discovered.

26
27 23. A person who knowingly obtains protected health information
28 relating to an individual, or discloses protected health information to
29 another person, in violation of the provisions of this act, shall be guilty
30 of a crime of the third degree, a crime of the second degree if the
31 offense is committed under false pretenses, and a crime of the first
32 degree if the offense is committed with intent to sell, transfer, or use
33 protected health information for commercial advantage, personal gain,
34 or malicious harm.

35
36 24. a. Nothing in this act shall be construed to preempt or modify
37 State common or statutory law concerning a privilege of a witness or
38 other person in a court proceeding.

39 b. Nothing in this act shall be construed to preempt, supersede or
40 modify any statute or regulation relating to:

41 (1) the reporting of vital statistics such as birth or death
42 information;

43 (2) the reporting of abuse or neglect information about any
44 individual;

45 (3) public or mental health that prevents or otherwise restricts
46 disclosure of protected health information otherwise allowed under

1 this act;

2 (4) a minor's rights to access protected health information;

3 (5) notification to emergency response personnel of possible
4 exposure to infectious diseases;

5 (6) the confidentiality of alcohol or drug abuse patient records; or

6 (7) any privilege for records used in health professional peer
7 review activities.

8

9 25. A health information trustee who makes a disclosure of
10 protected health information about an individual that is permitted by
11 this act shall not be liable to the individual for that disclosure under
12 common law.

13

14 26. The commissioner, pursuant to the "Administrative Procedure
15 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
16 regulations to effectuate the purposes of this act. The rules and
17 regulations shall be adopted, as applicable, after consultation with the
18 Attorney General, the Commissioners of Insurance, Human Services,
19 Commerce and Economic Development, Labor and Education and the
20 New Jersey Commission on Higher Education, and shall specify those
21 determinations pursuant to this act which are to be made by the
22 Attorney General, the Commissioners of Insurance, Human Services,
23 Commerce and Economic Development, Labor and Education and the
24 New Jersey Commission on Higher Education, respectively.

25

26 27. This act shall take effect one year after the date of enactment,
27 except that the commissioner shall take such anticipatory
28 administrative action in advance as shall be necessary to implement
29 the provisions of this act.

30

31

32

STATEMENT

33

34 This bill, which is designated the "Medical Records Confidentiality
35 Act," establishes confidentiality protections for medical records which
36 parallel those contained in proposed federal legislation (Senate Bill
37 No. 1360, currently pending in the United States Congress). The bill
38 would: establish criminal and civil penalties for improperly releasing
39 private medical records; allow the release of private medical
40 information without the patient's permission under certain
41 circumstances, such as for use by law enforcement authorities, medical
42 researchers, and for administrative purposes within an insurance
43 company, health care facility or HMO; and give every individual the
44 right to inspect his own medical records and request corrections
45 thereto.

46 This bill is intended to address a growing concern among the public

1 about the security of medical records and other health care
2 information, which is especially salient at a time of increasing focus by
3 State policy makers on the potential of automated electronic data
4 interchange technology to store and transmit this kind of information
5 throughout the State health care system.

6

7

8

9

10 Designated the "Medical Records Confidentiality Act."