

EXHIBIT A - Part 1

SENATE CHAMBER FLOOR DEBATE

MAY 4, 2006

HB 1346, requiring certain persons to keep the contents of prescriptions confidential.

THIS DOCUMENT HAS NOT BEEN PROOFED YET.

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HB 1346, requiring certain persons to keep the contents of prescriptions confidential. Executive Departments and Administration Committee. Ought to pass with amendment, Vote 3-1. Senator Kenney for the committee.

Sen. Kenney, Dist. 3
April 26, 2006
2006-2067s
01/09

Amendment to HB 1346

Amend the bill by replacing all after the enacting clause with the following:

1 New Sections; Pharmacists and Pharmacies; Prescription Information to be Kept Confidential. Amend RSA 318 by inserting after section 47-e the following new sections:
318:47-f Prescription Information to be Kept Confidential. Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise provided by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force. Nothing in this section shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; the transfer of prescription information between licensed pharmacies; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer or sale of patient and prescriber de-identified data

by zip code, geographic region or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this section is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this section.

318:47-g Patient Assistance Program.

I. Following the close of each calendar year, any clearinghouse that provides information to New Hampshire residents about pharmaceutical manufacturers' patient assistance programs shall, to the extent that the clearinghouse collects such information, provide aggregate information to the commissioner of the department of health and human services relative to either:

(a) The number of people in New Hampshire who may qualify for any manufacturer or government program during the calendar year; or

(b) The number of patients served during the calendar year.

II. An individual company may provide additional information about the individual company's patient assistance program; however, the commissioner shall combine all information from all sources, including individual companies and the clearinghouse, and shall report only aggregate information to the public.

2 New Paragraph; Controlled Drug Act; Prescription Information to be Kept Confidential. Amend RSA 318-B:12 by inserting after paragraph III the following new paragraph:

IV. Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise required by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force. Nothing in this paragraph shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; the transfer of prescription information between licensed pharmacies; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer or sale of patient and prescriber de-identified data by zip code, geographic region or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this paragraph is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this paragraph.

3 Effective Date. This act shall take effect upon its passage.

SENATOR KENNEY: Thank you, Mr. President. I move ought to pass with amendment on House Bill 1346. House Bill 1346 prohibits the sale or use of individual patient and prescriber identity data for marketing brand name prescription drugs. Current marketing practices, which rely on patient and prescriber data, can unfairly interfere with doctors' prescribing practices and are not in the best interest of the patient. The legislation as amended also clarifies that identity data, including electronic prescribing for the parents picking up medications for children and records transferred when pharmacies are sold are all

acceptable uses as well as for law enforcement, care management and research. The committee amended the bill to include a patients' assistance program, which was a key request of pharmacies and the committee recommends ought to pass with amendment on House Bill 1346. Thank you, Mr. President. Could I speak for a second time?

SENATOR GATSAS (In the Chair): You may continue speaking.

SENATOR KENNEY: Thank you. We all know that information is power, and when it comes to the drug companies marketing, they have the information and the power. The drug companies today have file and dossiers on each physician and what they are prescribing to the patient. And they get this information through the retail pharmacy chains, the managed drug plans for insurers. Drug sale representatives have physician prescribing habits at their disposal, and no doubt are trying to sell the highest end brand medicine. Remember in this legislature, it was not too long ago that we passed legislation that our Medicaid drug formulary would encourage the use of generic drugs when it was appropriate and that also included psychotropic drugs as well. Now we know the American Medical Association will soon give individual physicians an opt out choice declaring their prescription records off limits to drug sales representatives on July 1st of this year. It was surprising to learn that a large amount of physicians are unaware that there are data mining companies out there who access prescriber information. The patient privacy has never been a question here, because that is protected under HIPAA. This is information again, it's protected. But the question is, even without...even with an opt out choice for physicians, these companies can use this other marketing and research purposes. So, in other words, even if this opt out plan goes through and physicians buy into it, that there's still going to be ways of accessing the information. What this bill, if it were to pass into law, would basically strengthen the privacy of the doctor/patient relationship when it comes to drug prescription information. So I would just urge the body to support this legislation. Thank you, Mr. President.

SENATOR LARSEN: Thank you, Mr. President. I rise to support the committee amendment. I know that there is talk that there will be a floor amendment that will undo, and in essence, negate this committee amendment, and I urge you not to support that, but to in fact vote for this committee amendment and stay with this language. The committee's amendment protects the right of a prescriber, a doctor, to make prescriptions based on their best information and what's best for the patient. You have, as we've heard, data mining operations which the AMA actually has participated in, that mine information on what doctors prescribing patterns are, and use that data to market back to those physicians that they should in fact be buying a different brand, they should be stressing that particular pharmaceutical company's offering. And that that kind of marketing causes heavier, heavier stress, because they have private prescriber information on what that prescriber believes is in the medical best interest of the patient. House Bill 1346 will require that all entities that handle prescription information keep the patient identifiable and the prescriber identifiable data, confidential. Any amendment you see following ought to say "prescriber identifiable data". That that needs to be, remain confidential. House Bill 1346 will protect the privacy rights of the patient and the prescriber. It will prohibit the use of data for pharmaceutical sales or marketing and will reduce prescription drug costs for patients, employers and the New Hampshire Medicaid Program. We have heard from the New Hampshire Attorney General's Office. The Commissioner of Health and Human Services has supported this bill. In all of the documents that we have received and throughout the hearings, they were in attendance. The AARP of New Hampshire and the New Hampshire Medical Society are all in strong support of this privacy of information. How would you like it...and in fact, when you go to a grocery store, if you have a buying card, you in fact are being tracked. And at some point, they could call you up and say, "Why are you buying so much Bud?" and they could report that to your health insurer that you are a heavy purchaser of alcohol at the

grocery store. In the same way, the privacy rights of physicians of our state are being watched, violated, and I believe, unlawfully so. I think we need to make the law even stronger that this is a privacy right and it is good medical...makes good medical sense and good cost savings to the state, because physicians will not be encouraged to buy based on brand name; they will be encouraged to buy based on what is in the best medical interest. The bill...House Bill 1346 does not interfere with the use of prescriber or patient identifiable data for the purpose of insurance reimbursement, dispensing prescriptions, utilization review, public health research, or for law enforcement purposes. There are very clear...there's very clear language that exempts all of the activities that our own Department of Health and Human Services does on utilization review on prescribing...trying to encourage formulary use. The bill will not prohibit the use of prescriber identifiable data for the current drug utilization review under state Medicaid laws. It does not prohibit the use of prescriber identifiable data for analysis of drug formulary compliance for Medicaid or private insurance, and it does not prohibit pharmaceutical manufacturers from using prescriber identified data for sales and marketing analysis. There is no prohibition from using DI identified prescriber a data by zip code, town, geographic region or by medical specialty. So the only thing they're not going to be able to know under this is the doctor's name. They can bulk up who in Concord, New Hampshire, how many doctors prescribe Zocor and how...what affects it's having on that patient population. They can bulk identify, but having it be prescriber identified and physician identified is a violation of those prescriber's' privacy rights. I urge you to support the amendment in the calendar and to reject future amendments which look good, but if you have compared them with what the committee has worked hard to pass, you will see that it avoids the word "prescriber identified data", and it is therefore, a flawed amendment to follow.

SENATOR BARNES: Thank you, Mr. President.

SENATOR LARSEN: A question?

SENATOR BARNES: Yes. Thanks, Senator Larsen.

SENATOR LARSEN: Sure.

SENATOR BARNES: Is this the piece of legislation that I've received so many phone calls from, from constituents asking me to support?

SENATOR LARSEN: Yes it is, and the large group of AARP New Hampshire are all in support of this, as are all of the physicians that have contacted me, and I'm sure you. And all the emails and phone calls.

SENATOR BARNES: Thank you, Senator.

SENATOR CLEGG: Senator Larsen. Senator Larsen, can you tell me where in the amendment I could find where it says that Medicaid will be able to get the information?

SENATOR LARSEN: It's because it says "as identified by law" and Medicaid is a law that certain data needs to be included.

SENATOR CLEGG: Further question? So you're saying that while we're saying that everybody's information has to stay private, that is except for anyone who is in the Medicaid, or I suppose the Medicare system? Their information's not private under this bill.

SENATOR LARSEN: I don't know the specifics of what data is collected for prescriber information in order to encourage both Medicaid and Medicare patients to consider the most affordable. We are trying to keep our costs down in Medicare and Medicaid in our drug purchases. So if it's allowed by federal law or by our own state law, it says "or as otherwise provided by law" in the amendment, and that is the safeguard that both Medicare and Medicaid, and I have only information that Medicaid uses this information, and it's used to keep track of our formulary and our...keep our costs down in Medicaid, so it makes sense.

SENATOR CLEGG: One more follow up? So, Senator, can you tell me who's going to collect the data? If they no longer can collect the data and sell it based on physician, who's going to collect the data to give to Medicaid?

SENATOR LARSEN: It will still be collected because it will be aggregated data. It will just not be data that identifies which physician is doing what. So the data will be collected. It just will not identify the specific prescriber patterns.

SENATOR CLEGG: So someone will collect the data that they used to get paid for, someone will collect it now for nothing?

SENATOR LARSEN: I suspect there'll still be a market for aggregated data and, for those who are looking to do research, there may be a market there as well.

SENATOR CLEGG: Thank you, Senator.

SENATOR FOSTER: Thank you, Mr. President. I'm a co-sponsor of this legislation, and I co-sponsored it at the request of Representative Rosenwald who has worked it, and she and I have something in common. We're both married to physicians and they'll talk to us about what happens with drug reps and how they try to affect prescriber data patterns. To me, what this legislation is about is dollars and cents. That's what it's about. We hear about a lot of other things, and it's about privacy and so forth and so on, but for me, it's about cost. The biggest driver, one of the biggest drivers in healthcare costs, are prescription drug costs. We hear that all the time. We've talked about it in here in a variety of ways. We know down in Washington they talk about it as well. And what this data allows people to do is to target physicians who are prescribing perfectly good generic drugs which might cost say \$20 a prescription, and convince them, "You know, the latest and greatest, it's a little bit better, you ought to look at it", and their prescribing \$80. And guess who pays for that? All of us do. The way this information ought to be had with physicians is by going to CMEs, reading medical journals and so forth. To get it from sales people whose incentive is to sell, not to educate, I don't think is what we want to encourage. Will these folks be out of the system? No. They'll still have their jobs, but they won't have quite the edge that they have today. So this is about cost, and we all want to say we want to keep our medical costs down. That's what I see this legislation as. You know, I have heard something about...from some folks, that somehow this will impact research. You know, sometimes we're in here and we say to ourselves, you know, we're a small state, we can't affect very much that goes on nationally. And, in this instance, I'd say exactly the same thing. If somehow, and I don't believe it's going to affect research at all. It if did, we'd have less than one half of one percent of the physicians in the United States of America. You know, if we were New York or California or Florida or something, a really large state, maybe we'd have to think about this hard. I don't think it's a problem anyway, but if it were one, us passing this law is not going to affect research one little bit. Thank you very much, Mr. President.

SENATOR GOTTESMAN: I think everything has been covered, Mr. President.

The question is on the adoption of the committee amendment.

A roll call was requested by Senator Letourneau.

Seconded by Senator Barnes.

The following Senators voted Yes: Gallus, Johnson, Kenney, Burling, Green, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Larsen, Gatsas, Barnes, Letourneau, Estabrook, Morse, Hassan.

The following Senators voted No: Boyce, Flanders, Clegg, Martel.

Yeas: 18 - Nays: 4

Senator Fuller Clark (Rule #42).

Amendment Adopted.

Recess.

Out of recess.

The question is on the adoption of the bill as amended.

A roll call was requested by Senator Barnes.

Seconded by Senator Martel.

The following Senators voted Yes: Gallus, Johnson, Kenney, Boyce, Burling, Green, Flanders, Odell, Roberge, Eaton, Bragdon, Gottesman, Foster, Clegg, Larsen, Gatsas, Barnes, Martel, Letourneau, Estabrook, Morse, Hassan.

The following Senators voted No: None.

Yeas: 22 - Nays: 0

Senator Fuller Clark (Rule #42) on HB 1346.

Adopted.

Ordered to third reading.