

HOUSE COMMITTEE

HB 1346, requiring certain persons to keep the contents of prescriptions confidential. **120**
AMENDMENT

Rep. Cindy Rosenwald for Health, Human Services and Elderly Affairs: This bill safeguards the privacy of both patients and physicians by preventing the sale of their identity for use by pharmacies and drug companies to promote specific medications or monitor the effectiveness of sales and marketing efforts. The bill makes the sale of such private information a violation of the Unfair Trade Practice Act., While HIPAA is supposed to protect patient identity from being bought and sold, it is not always effective. A major drug company is under investigation for paying pharmacists and employees of physician offices to identify patients whose medications could be switched to a competing brand. In New Hampshire, the Pharmacy Board receives complaints from individuals who get coupons for other drug brands in the mail. Currently, drug companies buy the prescribing records of health care providers who prescribe medications. This is done without the provider's permission, and the committee believes it is an unwarranted invasion of privacy that eventually leads to higher drug utilization costs. The bill was amended to define carefully the prohibited uses of identity data. It also protects legitimate uses of identity such as insurance reimbursement, private insurance and Medicaid formulary compliance, fraud investigation, and academic research. Significantly, the legislation does not prohibit the collection, sale, or use of prescriber identity in the aggregate (e.g. the number of prescriptions for a specific brand by all the psychiatrists in Manchester). Therefore, the committee believes that a drug company's commercial interest in promoting its products and evaluating its sales force is adequately protected. In restricting the commercial use of identity data, doctors will be allowed to make prescribing decisions based on therapeutic value without influence from drug reps. This can lead to slower increases in cost for Medicaid and health insurance premiums paid by businesses and individuals. The Medical Society, DHHS, and the AG's office all support the legislation.

777

① IMS letter
Sophia Plotzker

② Data Mining of Mkt Knowledge in the Pharm.
Cohen, Zeneca Pharmaceuticals
John.cohen@ph.wilm.zeneca.com

③ PhRMA Statement
opposing HB 1346
Jan 24 2006
617 965-1166
Newton MA

④ IMS
Paper 127
Data mining at IMS
MEALTH: How we
turned...
HL = P. 3 "Research has been"

⑤ Kowalcyk, Liz
May 25 2003
Boston Globe
Drug Companies' Secret Reps

Doherty

House Clerks - Lily

Amendment to HB 1346

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

2

3 1 New Sections; Pharmacists and Pharmacies; Prescription Information to be Kept Confidential.

4 Amend RSA 318 by inserting after section 47-e the following new sections:

5 318:47-f Prescription Information to be Kept Confidential. Records relative to prescription
6 information containing patient-identifiable and prescriber-identifiable data shall not be licensed,
7 transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic
8 transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any
9 commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary
10 compliance; care management; utilization review by a health care provider, the patient's insurance
11 provider or the agent of either; health care research; or as otherwise provided by law. Commercial
12 purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could
13 be used to influence sales or market share of a pharmaceutical product, influence or evaluate the
14 prescribing behavior of an individual health care professional, or evaluate the effectiveness of a
15 professional pharmaceutical detailing sales force. Nothing in this section shall prohibit the
16 dispensing of prescription medications to a patient or to the patient's authorized representative; the
17 transmission of prescription information between an authorized prescriber and a licensed pharmacy;
18 the transfer of prescription information between licensed pharmacies; the transfer of prescription
19 records that may occur in the event a pharmacy ownership is changed or transferred; care
20 management educational communications provided to a patient about the patient's health condition,
21 adherence to a prescribed course of therapy or other information about the drug being dispensed,
22 treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use,
23 transfer or sale of patient and prescriber de-identified data by zip code, geographic region or medical
24 specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a
25 violation of this section is an unfair or deceptive act or practice within the meaning of RSA 358-A:2.
26 Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this section.

27 318:47-g Patient Assistance Program.

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

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

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

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

8 2 New Paragraph; Controlled Drug Act; Prescription Information to be Kept Confidential.
9 Amend RSA 318-B:12 by inserting after paragraph III the following new paragraph:

10 IV. Records relative to prescription information containing patient-identifiable and
11 prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits
12 manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet
13 pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of
14 pharmacy reimbursement; formulary compliance; care management; utilization review by a health
15 care provider, the patient's insurance provider or the agent of either; health care research; or as
16 otherwise required by law. Commercial purpose includes, but is not limited to, advertising,
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29 appropriate remedies under this chapter, a violation of this paragraph is an unfair or deceptive act
30 or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be
31 used to enforce the provisions of this paragraph.

32 3 Effective Date. This act shall take effect upon its passage.

HOUSE BILL **1346**

AN ACT requiring certain persons to keep the contents of prescriptions confidential.

SPONSORS: Rep. Rosenwald, Hills 22; Rep. MacKay, Merr 11; Rep. Miller, Straf 7; Rep. Price, Hills 26; Sen. Gottesman, Dist 12; Sen. Foster, Dist 13; Sen. Martel, Dist 18; Sen. Larsen, Dist 15

COMMITTEE: Health, Human Services and Elderly Affairs

ANALYSIS

This bill declares that prescription information shall not be transferred or sold for any commercial purpose except for the limited purpose of reimbursing the pharmacy.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

**AMA Best Practice Guidelines
For
Use of Prescribing Data by Industry**

The guidelines are intended to provide ethical guidance to the healthcare industry, in particular manufacturers of pharmaceuticals, devices and medical equipment and their related entities and business partners, regarding the responsible use of prescribing data. The AMA encourages organizations and their representatives to adhere to these guidelines in their direct relations with physicians.

Guideline 1:

Understand the physician's perspective that prescribing data is personal and sensitive in nature.

Guideline 2:

Keep prescribing data confidential and expressly prohibit disclosure of prescribing data by sales representatives to any other party.

Guideline 3:

Continually reinforce that use of prescribing data to overtly pressure or coerce physicians to prescribe a particular drug is absolutely an inappropriate use.

Guideline 4:

Continually educate and reinforce to all employees and agents, including contract sales force organizations, the appropriate uses of prescribing data (e.g. safety notices, recalls, drug samples distribution).

Guideline 5:

Maintain an internal contact person to handle inquiries or grievances about your organization's use of prescribing data.

Guideline 6:

Based on your organization's policies, identify appropriate disciplinary actions which may be taken against individuals who misuse prescribing data.

318:47-f Prescription Information to be Kept Confidential. Records relative to prescription information containing identifiable patient and prescriber data shall not be transferred, licensed, 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 purpose of reimbursing the pharmacy by the patient's insurance provider or the provider's agent. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any other purpose 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 detailing sales force. 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.

used

*doesn't apply to retain use
not preventing education of customers*

Deleted: except for the limited purpose of reimbursing the pharmacy by the patient's insurance provider or the provider's agent. *Service*

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:

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used

Contract P date will follow 2/1/0

Deleted: the limited purpose of reimbursing the pharmacy by the patient's insurance provider or the provider's agent.

Deleted: January 1, 2007

3 Effective Date. This act shall take effect July 1, 2006.

Except

Exception to Commercial purpose

HB 1346
Cindy Rosenwald, Hillsborough District 22
January 24, 2006

Good Morning Chairman Batula and members of the Committee. I am pleased to introduce HB 1346. This legislation is about both privacy and cost containment. It will prohibit the transfer of information that identifies patients and the individual prescribers for commercial marketing purposes. I'd like to explain specifically what the bill does, what it doesn't do, and why I think it is important.

Beginning with selling the identity of patients, you may be asking yourselves, "Doesn't HIPAA protect patient privacy?" This is what HIPAA is supposed to do, and it usually works. But not always. Sometimes patients will get a coupon in the mail for a brand name medicine that is a competitor to the one they take, and they wonder how the drug company knew who they were. The compliance division of the pharmacy board gets complaints from consumers about this, and anecdotally, you may know people who have had a similar experience. So how can we better protect the privacy of patients in New Hampshire from having their identity sold when they fill prescriptions? This bill makes the selling of a patient's identity for the purpose of marketing a violation of the Unfair Trade Practices Act, RSA 358-A:2, and gives jurisdiction to the Attorney General's office for enforcement.

Now let's look at how this information gets sold. I have given each of you a flow chart that depicts the actual process of what happens to the information contained in a prescription, including the identity of the prescriber. As I said before, patient names are supposed to be protected, and they usually are. This flow chart was developed by a pharmacist and the pharmacy board, and it's really complicated. Looking at the left hand side of the page, when a patient brings a prescription into a retail pharmacy, the information is often sent to what is called a "switching station" or electronic transmission intermediary. These companies work with data from different software programs and pharmacy benefits managers to put all the information into a similar format. The data is then transferred or sold to a data mining company. Sometimes the data may be sold by the pharmacy chain directly to the data mining company, and sometimes it is sold by the pharmacy benefits manager. Last year we approved electronic prescriptions, and these would go directly to the electronic transmission intermediary. Finally, a patient might fill a prescription through mail order, and in that case the information is processed differently.

The key thing to remember is that information about the prescription—including the identity of the prescriber—is transferred to a data mining company. The data mining company is able to use powerful computer programs that track the exact prescribing habits of physicians and then create reports showing exactly how many prescriptions an individual doctor has written for specific brand name drugs. This is obviously an extremely powerful tool, and drug companies buy these reports from the data mining companies. I have given each of you an article from IMS Health, the largest data mining company, which has an example of a physician profiling report on an individual doctor, including how many prescriptions he has written for two competing drug brands by month.

I first became aware of the practice of physician profiling through an article in the *Boston Globe*. You have a copy of this article. I think many of you know I am married to a doctor, and I showed him the article. My husband's first reaction was, "I went to medical school with that guy." His second reaction was, "Drug reps do this to me all the time. They know more about what I'm prescribing than I do." As I said before, this legislation is partly about privacy, not only for patients, but also for physicians. As I think about what sets my husband apart from other doctors in his field, there are three things: bedside manner, diagnostic skills, and clinical judgment. His clinical judgment is a synthesis of what he learns from journals and conferences and his 28 years of experience in using specific medications in his practice. This is what we might call his intellectual property, and I believe that doctors are entitled to the same privacy as the rest of us. After all, when I go to Shaw's and use my rewards card, the store ends up with an exact record of whatever I buy. But I have voluntarily enrolled in this program, given my permission, and I get something out of it in the form of lower prices. Through these data mining reports, doctors lose their privacy involuntarily. Without any permission, drug companies know how doctors think and how they behave.

So why are these data mining reports so valuable to the drug companies that they are willing to buy the information from pharmacies, pharmacy benefits managers, or data miners? The answer is that drug companies market their products to doctors through advertising, educational dinner meetings, product samples, and personal contact with drug reps. Doctors have limited time, and drug rep office visits are costly, so the drug companies naturally want to make the most of each visit. The more they know about how an individual doctor's actual prescribing behavior is influenced by a specific marketing approach, and how many times a doctor prescribes each product in a drug class, the more closely they can target individual physicians, give them information that shows their product in the most favorable light, and exert pressure on them to change their prescribing habits.

I said at the beginning HB 1346 is about cost containment. We are talking about big money here. According to IMS Health, getting one more prescription per week per provider would translate to over \$50 million dollars a year in added sales. Here in New Hampshire, prescription drug costs have an enormous financial impact on the state and ultimately the taxpayers. In 2004, we spent \$95 million on prescription drugs for the Medicaid program. I looked at our Medicaid Preferred Drug List and chose two commonly prescribed drugs that treat high cholesterol. One costs Medicaid \$98 a month. The other, at a similar dosage, costs \$144 for a month's supply, 47% more. Over the course of a year, the difference would be more than \$550 per patient for one drug alone. Both drugs treat the same condition, and both may be prescribed without prior authorization. But there is a huge difference in cost, and I think doctors should be allowed the privacy to make their prescribing decisions without sales pressure and based on therapeutic value. If we extend this one example of cholesterol drugs to the 80,000 people whose prescription drug costs are covered by Medicaid, we can see that the financial implications for New Hampshire are huge. And that's just for Medicaid. Clearly there are also cost implications for everyone who uses prescription drugs.

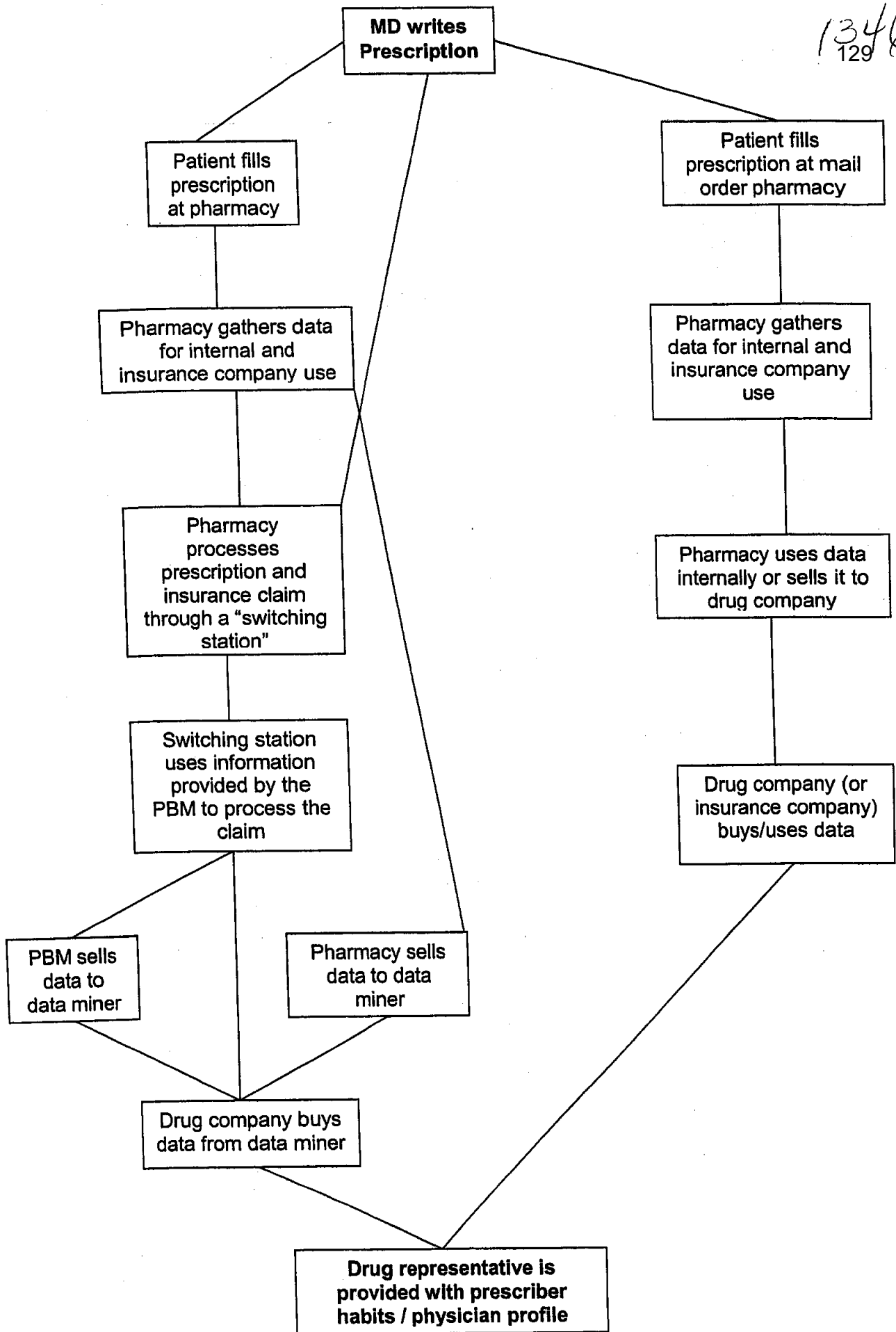
Now let me tell you what this bill does not do. It was carefully drafted so as not to interfere with utilization review, compliance, academic research, or insurance company reimbursement to pharmacies. These are all legitimate uses of the identifiable data and are protected by this legislation.

You will hear opposition to this bill. You may hear that it is not possible to remove the names or ID numbers of the prescribers from the data. But all this manipulation of information is done by computer, and computer programs can certainly be changed to omit or otherwise obscure the identity of the prescriber. This already has to be done to protect patient identity under HIPPA.

You may also hear that physician profiling reports benefit the drug companies by allowing them to monitor the effectiveness of their sales force. I have no doubt this is true. However, there is nothing in the bill that prohibits evaluating the sales force by reporting, for example, the number of prescriptions by brand name by the zip codes that correspond to the drug rep's territory. As one drug rep said to me, "Honestly, we can tell just by walking into a waiting room whose practice is busy and worth targeting our marketing to."

Members of the committee, I hope you will agree that prohibiting the sale of identifiable data for commercial marketing purposes will both safeguard privacy and save money. I will be happy to answer questions. Thank you.

1346
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Statement of Marc M. Sadowsky, M.D.

1/24/06

Thank you for giving me the opportunity to testify regarding HB 1346. My name is Marc Sadowsky and I am a psychiatrist practicing in Nashua and the President of the New Hampshire Medical Society, which supports this legislation.

We believe this legislation is important for several reasons. Every day sales representatives from drug companies try to convince us to prescribe their products. At times I have been asked why I prescribed more of drug A last month instead of the salesperson's drug B.

In psychiatry many of the medications being promoted to me and my colleagues are very similar, both in price—very expensive—and mechanism of action. There are often generic drugs which are less expensive and work similarly. The generic medications are rarely promoted to us.

To continue to allow the drug companies to develop dossiers on the prescribing practices of physicians is both an intrusion on our and our patient's privacy. These intrusions enables them better focus their marketing on us individually. The sales representatives can easily determine if their latest sales pitch, dinner invitation, or gift has resulted in a change in our prescribing behavior. If they see that I'm prescribing more Drug X than their Drug Y, they might show me their data that points to the problems of Drug X. Some physicians maintain that they are not influenced by drug company sales pitches, but I firmly believe that we are and that Pharma wouldn't be spending tens of billions of dollars trying to influence our behavior if we weren't influenced.

This bill has positive financial implications for New Hampshire. If some of the marketing tools are taken from the drug companies, perhaps we physicians will be less prone to prescribing expensive medications when less expensive generic equivalents are available.

I do believe that knowing our prescribing patterns is very valuable and that physicians should have easy access to this information. This would also help to critically evaluate our practices and improve our ability to care for patients.

Thank you.

AARP New Hampshire Testimony on HB 1512
House Health, Human Services and Elderly Affairs Committee
January 24,2006

Good morning. I am Bill Hamilton Advocacy Director for AARP NH. AARP is a nonprofit membership organization of persons 50 plus years of age and we have over 215,000 members throughout the state. Thank you Chairman Batula and members of the Health, Human Services and Elderly Affairs Committee for the opportunity to share our views with you.

Prescriber profiling is a method used by pharmaceutical detailers to target prescribers with specific information. Detailers are armed with a prescriber's pharmaceutical prescribing history and a detailer knows exactly how many of the competitors' products they have prescribed. This information details a prescriber's prescribing history including dose and medical diagnosis. With that information in hand, a detailer has a significant advantage to tailor his or her presentation directly to the individual prescriber. The detailer can tell if the prescriber prefers a specific brand to another and if they prescribe heavily in a particular class of drugs.

AARP NH is concerned over the use of prescriber profiles to track physician prescribing patterns. While AARP recognizes the significant help this practice provides to the manufacturer, the consumers are at risk. A consumer could be switched or even started with a specific drug that is not the best prescription for the individual. The prescriber's decision may be based less on a drug's clinical attributes and more on specific information provided by the detailer.

Thank you for your efforts to prescriber profiles. We would like to be a continuing resource to you on this topic, and will be prepared to give further testimony at the subcommittee level.

Testimony from NH Association of Chain Drug Stores, Stuart D. Trachy

Mr. Chairman and members of the committee. My name is Stuart Trachy and I am here today representing the NH Association of Chain Drug Stores. We are opposed to House Bill 1346.

The issue of confidentiality of medical information is often portrayed in very simple terms and is sometimes addressed by trying to limit the flow of information in one way or another. We know, however, it is really not that simple as the recent federal HIPAA legislative and regulatory experience has shown us. We believe this proposal directed at prescription records is too broad, and causes many problems as a result of the unintended consequences due to the unique nature of pharmacy practice.

Here are some examples of problems from this approach:

Prevention of necessary disclosures for health care treatment and operations

This legislation is so restrictive that it would prevent pharmacies from engaging in many health care operations necessary for providing pharmacy patient care because it would prevent disclosures needed for health care practices such as disease state management, drug and disease compliance management, drug use review, formulary management, drug therapy interventions, generic drug management programs, generic drug use incentive programs, medical and drug data analysis to promote cost effective drug use, programs to assist providers with cost effective drug therapy and management, stop therapy and wellness management programs.

Prevention of necessary prescription transfer

This legislation would prevent the common and necessary occurrence of prescriptions being transferred from one pharmacy to another. Often patients ask to have their prescriptions transferred to another pharmacy for their convenience or particular health care needs.

Electronic prescriptions and prescribing

This legislation would prevent the use of electronic prescribing and sending electronic prescriptions to pharmacies. This bill would put a stop to this

Sale of business

Many privacy bills are silent on mergers or business sales and may require obtaining individual consent... from each patient who ever filled a prescription at the pharmacy... to transfer their prescription records prior to any sale or merger. Unless appropriate provisions are included, every time a pharmacy (or medical or dental practice) is bought or sold, the business will have to acquire consent from every patient for whom they have ever filled a prescription or treated. The cost alone... not to mention the logistics... are staggering. This provision will fall particularly hard on retiring pharmacists... destroying any "good will" value their pharmacy might have when they attempt to sell.

Minors or persons deemed incompetent

Who may consent for minors is often not stated or unclear at best. Some laws speak of "legal guardians" and this implies a specific legal standing and may not include joint custody or non-custodial parent situations. It is often unclear who could pick up a prescription for a child, how the pharmacist can instruct the parent or how the pharmacy could get paid for the medication. Without specific consent from the minor patient or an exception prescriptions could not be provided to parents for their children. To encourage children to receive care for conditions they might be reluctant to tell their parents about, many states already have laws allowing children to receive treatment without their parents consent for conditions such as psychiatric problems, drug abuse treatment or sexually transmitted diseases. Almost always privacy bills are entirely unclear as to what the appropriate procedure is in these cases.

Others picking up prescriptions for their family members or friends

This bill would prevent the common and helpful practice of a patient's relatives or friends picking up prescriptions when needed. Pharmacy is the only segment of health care that is *routinely* asked to provide confidential health information to someone other than the patient. Patients *expect* this service and would not want this type of complication. Presently in the United States, someone other than the patient picks up a full 25% of prescriptions filled in community pharmacies. The bill as presently written

will deny care and infuriate patients by crippling a desirable and necessary community pharmacy practice.

Law enforcement

Bills often omit an exemption from obtaining consent to release information in compliance with court orders, subpoenas, or requests from the Board of Pharmacy, Board of Medicine, DEA, FDA or the police. A pharmacist must be allowed to notify the DEA or the police about potentially forged prescription or to comply with court orders and subpoenas without obtaining consent from the person presenting the prescription. If not, when a pharmacist is presented with a suspicious prescription, the pharmacist would actually be forced to ask the forger to consent to call law enforcement.

In addition to the above consequences, it should be noted that even the American Medical Association recognizes the legitimate use of prescription data by pharmaceutical companies. The following is from their web site:

How Pharmaceutical Companies Use Physician Prescribing Data
Although the AMA rejects the inappropriate use of prescribing data, it recognizes the legitimate use of these data by pharmaceutical companies that support sound health care practices. For example, prescribing data is used to detect drug diversion, target promotional and marketing materials, and distribute pertinent drug samples and educational materials to physicians. Prescribing data can also have numerous applications that are critical to public health. By providing integrated national pharmaceutical information, researchers can study mortality and morbidity, long-term drug effects, orphan drugs, drug safety, and interaction. Absent specific prescribing data, pharmaceutical companies would likely market products and materials by geographic location and practice specialty, resulting in irrelevant sales calls and materials.

Also at the AMA web site are the best practice guidelines for the use of prescribing data by Industry. The chain pharmacy industry also embraces these guidelines and believes those who operate in this area should embrace them, too.

Given the concerns we have raised today, in addition to those we might not have considered, we hope you will find HB 1346 inexpedient to legislate.

HOUSE COMMITTEE ON HEALTH, HUMAN SERVICES AND ELDERLY AFFAIRS

PUBLIC HEARING ON HB 1346

BILL TITLE: requiring certain persons to keep the contents of prescriptions confidential.

DATE: Jan. 24, 2006

LOB ROOM: 205 **Time Public Hearing Called to Order:** 10:00 a.m.
Time Adjourned: 11:10

(please circle if present)

Committee Members: Reps. Batula, MacKay, Chabot, P. Katsakiores, Emerson, Barry, C. Brown, C. McMahon, Weldy, Hess, Hogancamp, Mason, Chapin, French, Sokol, Miller, Donovan, Schulze, Jillette, Rosenwald and J. Tilton.

Bill Sponsors: Reps. Rosenwald, MacKay, Miller, Price, Sens. Gottesman, Foster, Martel, Larsen

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Rosenwald, sponsor, supporting

-prescription profiling removes patient's name – would like doctor's name removed as well

Marc Sadowsky, MD, Concord, NH Medical Society representing self and society

-supporting bill, submitted written testimony
 -drug company marketing drugs that are not generic - as generic drugs are cheaper and not marketed as heavily
 -name brand or generic drug may alter the outcome for a patient
 -patient may not be able to afford name-brand drug and not properly take medications
 -name-brand and generic drugs are not always the same, may contain different ingredients

Rep. Kurk, supporting

-prescription records should be as confidential as medical records

Sofia Plotzker, **Robert Hunkler**, representing IMS Health in PA., opposing bill

-more than a dozen states have brought forth similar bills an none of them have passed
 -marketing provides free samples to general doctors not targeted to doctors with heavy use of certain drugs
 -patient privacy has been already stripped when IMS receives information

Greg Moore, DHHS, supporting

-this bill preserves his prescription trade secrets to prescribing medications
 -there are over 6,000 prescribers in this state

HB 1346(2)

Bill Hamilton, representing AARP NH, supporting
-submitted written testimony

Valerie Acres, representing Pharmaceutical Research & Manufacturers of America
-opposing
-submitted written testimony

Palmer Jones, representing NH Medical Society, supporting
-number of prescribers is 4400
-also non-practitioners
-this information should stay between patient and doctor

Sen. Larsen, supporting

Claire Ebel, representing NHCLU, supporting

Stuart Trachy, NH Association of Chain Drug Stores, opposing
-submitted written testimony
-believes bill is too broad needs to be narrowed to support privacy
-unintended consequences will hamper who can pick up a prescription

Respectfully submitted,

Rep. Carolyn A. Brown

Rep. Carolyn A. Brown
CLERK OF THE COMMITTEE

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # HB 1346 Date 1/24/06
 Committee WV EA

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one)	
				Pro	Con
Sen. B. Letourneau	Dist 19			✓	
Richard Head	Bureau Chief, Consumer Protection & Antitrust Bureau, Dept. of Justice			K	
Janet Monahan	224-1909		NH Medical Society	✓	
Bill Hamilton			AARP	✓	
CURTIS J. BARRY	THE DUPONT GROUP 228-3122		MEDCO HEALTH SOLUTIONS		X
Sen. ANDRE H. MARTEL	DIST # 18		Constituents	✓	
RICK NEWMAN	225. 5134		PHIPA (INDEPENDENT PHARMACY ASSOC.)		
Sen SYLVA WARREN			DIST 15	✓	



Was Not Used

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30 3 Effective Date. This act shall take effect July 1, 2006.



2006-0684h

AMENDED ANALYSIS

This bill declares that prescription information shall not be used, transferred, licensed, or sold for any commercial purpose except for the limited purpose of reimbursing the pharmacy.

Senate Floor Debate May 4, 2006.

Begins at 2:01

Thank you Mr. President, the Committee on Executive Departments and Administration to which is referred HB 1346, an act requiring certain persons to keep the contents of prescriptions confidential. Having considered the same the committee recommends that the bill ought to pass with an amendment by a vote of 3-1. Senator Kenney for the committee:

Senator Kenney: Thank you Mr. President, I move ought to pass with Amendment on House Bill 1346. HB 1346 prohibits the sale or use of individual patient and prescriber identity data for marketing brand name description drugs. Current marketing practices which rely on patient and prescriber data can unfairly interfere with Doctors' prescribing practices and are not in the best interests of the patient.

The legislation as amended also clarifies that identity data, including electronic prescribing for the parents picking up medications for their children, and records transfers 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 HB 1346. Thank you Mr. President, and can I just speak for a second time?

President: You may continue to speak.

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. Drug companies today have file 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 patterns at their disposal, and no doubt they're trying to sell the highest brand medicine. Remember, this legislation 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 first of this year. But it is 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. That's protected under HPPA. This information again is protected. But the question is, even with an opt-out choice for physicians, these companies can use this for other marketing and research purposes. So, in other words, even if this opt-out plan goes through and physicians buy into it, there are still going to be ways of accessing the information. But 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.

President: The bill is now in second reading, the first order of business for committee members. Is there any discussion on the committee amendment? Senator Lyon:

Senator Larson: 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 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 then 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 offerings. And that kind of marketing causes heavier stress because they have 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 take prescriber identifiable data, because that needs to 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 NH Medicaid program. We have heard from the NH Attorney General's office; the commissioner of health and human services has supported this bill in all of the documents we have received and throughout the hearings they were in attendance. The AARP of NH and the NH 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, and 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 the physicians of our state are being watched, violated, and I believe unlawfully so. I think we need to make the law even stronger but this is a privacy right; and, it makes good medical, good medical sense and 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 of the patient. The bill, House Bill 1346 does not interfere with the use of prescriber or patient identifiable data for the purposes of insurance reimbursement, dispensing prescriptions, utilization reviews, public health research or for law enforcement purposes. There is very clear language that exempts all of the activities that our own Department of Health and Human Services does on utilization reviews, on trying to encourage formulary use.

The bill will not prohibit the use of prescriber data for current 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 identifiable data for sales and marketing analysis. There is no prohibition from using de-identified prescriber data by zipcode, town, geographic region, or by medical speciality. So the only thing they're not going to be able to know under this is the doctor's name. They can look up who in Concord NH—how many doctors prescribe Zocor and what effects 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 prescribers' privacy rights. I urge you to support the amendment in the calendar, and to reject future amendments which look good but if you 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.

President: We have time for questions.

(unidentified 1) (possibly Flanders?): Thank you Mr. President. Is this the piece of legislation that I've received so many phone calls from from constituents asking me to support?

Sen. Larson: Yes it is. And the large group of AARP NH 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.

(unidentified 1): Thank you Senator.

President: Another time for questions.

(unidentified 1): Senator Larson, can you tell me where in the Amendment I can find where it says that Medicaid will be able to get the information?

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

(unidentified 1): So you're saying that—

President: Further questions?

(unidentified 1): 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 is not private under this bill.

Sen. Larson: 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 this the most affordable. We are trying to keep our costs down in both Medicare and

Medicaid in our drug purchases. So, if it's allowed by federal law, or by our own state law, it says "or is otherwise provided by law," it's in the amendment, and that is the safeguard for both Medicare and Medicaid, and I have only information that Medicaid uses this information. It is used to keep track of our formulary and keep our costs down in Medicaid so it makes sense.

President: One more follow up?

(unidentified 1): 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 of physician, who's going to collect the data to give to Medicaid?

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

(unidentified 1): So, someone will collect the data that they used to get paid for—someone will collect it now for nothing?

Sen. Larson: I suspect there will still be a market for aggregated data. And for those who are looking to do research there may be a market there as well.

(unidentified 1): Thank you.

President: Senator Foster

Senator Foster: Thank you Mr. President. I am a co-sponsor of this legislation, with Rep. Rosenwald. 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 this is about. We hear about a lot of other things—that it's about privacy and so forth, but for me, it's about cost. The biggest driver, or one of the biggest drivers, of healthcare costs are prescription drug costs. We hear that all the time, and we've talked about that here in a variety of ways. We know down in Washington they talk about it as well.

What this data allows people to do is to target physicians who are prescribing perfectly good generic drugs which may cost twenty five per prescription, and convince them, you know the latest and greatest, it's a little bit better, you ought to look at it, and they're prescribing eighty five. And guess who pays for that? All of us do. They way this information ought to be had by 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; they won't have quite the edge that they have today. So this is about cost, and we all say we want to keep our medical costs down. That's what I see this legislation as.

And I've heard something about some folks—somehow this won't impact research. Sometimes we're in here and we say to ourselves, you know, we're a small state that can't affect very much that goes on nationally. And in this instance, I say exactly the same thing. Because somehow I don't believe it's going to affect research at all. If it did—we have less than one half of one percent of the physicians in the United States of America. 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, our passing this law is not going to affect research one little bit. Thank you very much Mr. President.

President: Senator Godesman?

Senator D: I think everything has been covered Mr. President.

(unidentified): Roll call?

President: Question is on the adoption of the committee amendment. Roll Call on the question.

Senator Gallus: Yes
 Senator Johnson: Yes
 Senator Kenney: Yes
 Senator Bowie: No
 Senator Burling: Yes
 Senator Green: Yes
 Senator Flanders: No
 Senator O'Dell: Yes
 Senator Roberge: Yes
 Senator Eaton: Yes
 Senator Bragdon: Yes
 Senator Godesman: Yes
 Senator Foster: Yes
 Senator Clegg: No
 Senator Larson: Yes
 Senator Barnes: Yes
 Senator Martell: No
 Senator LeTourneau: Yes
 Senator D'Allesandro:
 Senator Esterbrook: Yes
 Senator Morse: Yes
 Senator Hassen: Yes
 Senator Fuller Clark: Rule 42.
 Senator Gasson: Yes

Speakers Positions on HB 1346

Senate Committee Hearings

In Favor

Rep. Rosenwald
 Rep. Price
 Rep. Pilliod
 Greg Moore (DHHS Commissioner's Rep)
 Seddon Savage, NH Medical Society
 Marc Sandowsky, NH Medical Society
 Bill Hamilton, AARP NH
 Janet Monahan, NH Medical Society
 Carolyn Finnochiaro, practitioner

Opposed

Sen. Flanders
 Stuart Trachy, NH Chain Drug Stores
 Robert Hunkler, IMS Health
 Marjorie Powell, PhRMA
 Finkelstein, Shaw and Vermeulen (academic researchers)

Senate Floor Debates

In Favor

Sen. Foster
 Sen. Larson
 Sen. Kenney

Opposed

Sen. Flanders

House Committee Hearing

In Favor

Rep. Rosenwald
 Sadowsky
 Hamilton
 Rep. Kurk
 Palmer Jones, NH Medical Society
 Sen. Larsen
 Claire Ebel, NHCLU

Richard Head, AG
Sen. LeTourneau
Sen. Martel

Opposed

Trachy
Susan Plotzker, IMS
Hunkler, IMS
Valerie Acres, PhRMA
Curtis Barry, Dupont Group

House Transcript Not Yet Available