

# Executive Departments and Administration Committee

## Hearing Report

**To:** Members of the Senate

**From:** Joshua Chamberlain  
*Legislative Aide*

**Re:** HB 1346 - requiring certain persons to keep the contents of prescriptions confidential

**Hearing date:** April 19, 2006

**Members present:** Sen. Kenney, Sen. Barnes, Sen. Flanders, Sen. Fuller Clark, Sen. Larsen,

**Members absent:** Sen. Boyce,

---

**Sponsor(s):** 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

**What the bill does:** This bill declares that prescription information shall not be used, transferred, licensed, or sold for any commercial purpose except for limited purposes.

**Who supports the bill:** The sponsors, Rep. Batula, Rep. Herding, Rep. Emerson, Rep. Harvey, Rep. Brown, Rep. Schulze, Rep. Mitchell, Rep. French, Rep. Keans, Rep. Morsesian, Rep. Mason, Commissioner Stephen (DHHS), Richard Head (Department of Justice), Mark Sadowski (NH Medical Society), Seddon Savage (NH Medical Society), Janet Monahan (NH Medical Society), Carolyn Finochinara (CMC), Bill Hamilton (AARP),

**Who opposes the bill:** Scott Ganow (Verispan), Stuart Trachy (NH Association of Chain Drug Stores), Robert Hunkler (IMS), Henry Veilleux (Eli Lilly), Anne Kuster (Merck), Marjorie Powell (PHARMA), Katrina Iserman (Wyeth), Vincent Lawler (Scherring-Plough), Curtis Barry (Medco), Edward Dupont (IMS Health),

**Summary of testimony received:**

Rep. Rosenwald introduced the bill and said HB 1346 will protect privacy and save money for the state, consumers and business. It will accomplish these goals by prohibiting the sale or use of individual patient and prescriber identity for marketing brand name prescription drugs. Rosenwald also introduced an amendment (1887s) that clarifies what can and cannot be done with patient and prescriber identify data. It clarifies that identity data included in electronic prescribing, parents picking up medications for children and records transferred when pharmacies are sold are all acceptable uses.

Rep. MacKay said the bill received unanimous support in committee and by the full House.

Rep. Price said it is important to balance privacy with drug companies ability to market. Price said in light of the 100,000 people in NH on Medicaid, the bill could have a significant financial impact on the state. The responsibility belongs with the prescribing physician and should be kept there.

Rep. Pilioid said he supports the bill as amended which ensures that the information that is transmitted is de-identified.

Sen. Flanders introduced an amendment that would protect patient confidentiality and limits uses of any patient information to those uses identified under the federal health privacy act. In addition, the Flanders amendment allows prescription information to be used for activities that would improve patient care.

Richard Head, Attorney General's Office, said he concurs with the proposed amendments and noted the amendments also address information transmission relative to law enforcement, care management and research.

Stuart Trachy, NH Association of Chain Drug Stores, said under HB 1346 the ability of chain drug stores to move prescriptions from one store to another would be put in jeopardy. HB 1346 goes beyond where 49 other states have gone. The bill also goes beyond American Medical Association guidelines.

Scott Ganow, Verispan, opposes the bill and said by preventing the release of prescribing information, NH will see increased health care costs associated with the elderly and Medicaid, inefficient distribution of free drug samples and increased compliance and enforcement costs to affected companies and the government.

Seddon Savage, NH Medical Society, said corporations like IMS can undermine a doctor's prescribing patterns while not serving the clinical needs of patients. Savage likes the bill because it deters marketing to independent doctors which could take place at the expense of the patient's best interest. Marketing by prescription drug companies does affect decision making he said.

Mark Shidowski (NH Medical Society) supports the bill and said the NH Medical Society does break with the AMA on this issue and noted that many of his colleagues did not know about the buying and selling of prescribing information.

Bill Hamilton, AARP, said he supports the bill with Sen. Kenney's Amendment which addresses the chain drug stores' concerns.

Robert Unkler, said he supports the bill with Sen. Flanders' amendment and said without the Flanders Amendment the bill will cause costs to increase due to companies' inability to target their marketing strategies. In addition, Unkler said if the commercial incentive to collect the data goes away, then there will be no incentive to collect and distribute aggregate data for research purposes.

Janet Monahan, NH Medical Society, said she supports the bill with Sen. Kenney's amendment. Monahan told the committee that the AMA earns \$30 Million annually from licensing agreements with IMS. Monahan said doctor's own the information that is being bought and sold, not IMS.

Marjorie Powell, PHARMA, supports the bill with the Flanders Amendment. Without Flanders amendment, new drugs will be restricted from coming on line and the ability of drug companies to quickly notify prescribing doctors when a particular drug needs to be recalled would be eliminated.

Carolyn Finochiarra, Director of Cholesterol Center at Catholic Medical Center, said drug companies do not need to know what she is prescribing or to whom.

**Future action:** pending

# SENATE Executive Departments & Administration

Date 4/19/06 Time 2:05 pm Public Hearing on Bill # HB 1346

requiring certain persons to keep the contents of prescriptions confidential.

(Please print)

Please check box(es) at left that apply.

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Henry Veilleux	Eli Lilly
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Richard Hand	Dept of Justice
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Alan M. Krusta	Rath+Young - Merck
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Marjorie Powell	Ph. # MA
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Katrina Kermer	Wyeth
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Vincent Lawler	Schering-Plough
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	BOB FLOWERS	SEN DIST 7
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Curtis Barry	Medco
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Edward Dupont	IMS Health
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>		
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Marc Sadowsky, M.D.	NH Med Society
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	SEN SILVIA LARSEN	DIST 15
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Jean Schuler	Hills Dist 26
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		



STATE OF NEW HAMPSHIRE  
Department of Health & Human Services

Gregory P. Moore  
Public Affairs & Government Relations

Office of the Commissioner  
129 Pleasant Street  
Concord, NH 03301-3857

TEL: 603-271-4051  
FAX: 603-271-4912  
CELL: 603-568-8159  
gpmoore@dhhs.state.nh.us

①

## SENATE Executive Departments & Administration

Date 4/19/06 Time 2:05 pm Public Hearing on Bill # HB 1346

requiring certain persons to keep the contents of prescriptions confidential.

(Please print)

Please check box(es) at left that apply.

SPEAKING?	FAVOR	OPPOSED	NAME	REPRESENTING
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Joseph Foster	Senate Dist. 13
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	David Gottesman	Senate Dist. 12
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	JOHN STEPHEN	DHHS
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Pam Pucci	Hills Dist 26 - Nashua
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Stuart Trachy	N. H. Assoc. of Chain Drug Stores
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	SCOT GANOW	VERISPAN, LLC
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	JOE Miller	Strafford 7
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bonnie Mitchell	Rep. District 7
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep Barbara C. Freude	Meriden
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	REP. SANDRA KEANS	STRAFFORD 1
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Lori Morsesian	Hillsborough #22
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep April Mason	District #13 Rockingham
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Marc Sadowsky, MD + Seddon Savage, MD	NH Medical Society on
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Peter Batula	Hills Dist #19
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Bill Hamilton	AARP NH
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Rep. Jim Mackay	Co Sponsor
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	ROBERT HUNKLER	IMS HEALTH
<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Janet Monahan	NH Medical Society

HB 1346 – AS AMENDED BY THE HOUSE

22Feb2006... 0738h

06-2404  
01/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Six*

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

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

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

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

3 318:47-f Prescription Information to be Kept Confidential. Records relative to prescription  
4 information containing identifiable patient and prescriber data shall not be used, transferred,  
5 licensed, or sold by any pharmacy benefits manager, insurance company, electronic transmission  
6 intermediary, retail, mail order, or Internet pharmacy, or other similar entity, for any commercial  
7 purpose, except for the limited purposes of pharmacy reimbursement, care management, and  
8 utilization review by the patient's insurance provider or the provider's agent. Commercial purpose  
9 includes, but is not limited to, advertising, marketing, promotion, or any other purpose that could be  
10 used to influence sales or market share of a pharmaceutical product, influence or evaluate the  
11 prescribing behavior of an individual health care professional, except for evaluation by an insurance  
12 provider or the provider's agent for the purpose of compliance with the provider's formulary, or  
13 evaluate the effectiveness of a professional detailing sales force. In addition to other appropriate  
14 remedies under this chapter, a violation of this section is an unfair or deceptive act or practice within  
15 the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the  
16 provisions of this section.

17 2 New Paragraph; Controlled Drug Act; Prescription Information to be Kept Confidential.  
18 Amend RSA 318-B:12 by inserting after paragraph III the following new paragraph:

19 IV. Records relative to prescription information containing identifiable patient and  
20 prescriber data shall not be used, transferred, licensed, or sold by any pharmacy benefits manager,  
21 insurance company, electronic transmission intermediary, retail, mail, or Internet pharmacy, or  
22 other similar entity, for any commercial purpose, except for the limited purposes of pharmacy  
23 reimbursement, care management, and utilization review by the patient's insurance provider or the  
24 provider's agent. Commercial purpose includes, but is not limited to, advertising, marketing,  
25 promotion, or any other purpose that could be used to influence sales or market share of a  
26 pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care  
27 professional, except for evaluation by an insurance provider or the provider's agent for the purpose of  
28 compliance with the provider's formulary, or evaluate the effectiveness of a professional detailing  
29 sales force. In addition to other appropriate remedies under this chapter, a violation of this  
30 paragraph is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right or

**HB 1346 – AS AMENDED BY THE HOUSE**

**- Page 2 -**

1 remedy set forth in RSA 358-A may be used to enforce the provisions of this paragraph.

2 3 Effective Date. This act shall take effect July 1, 2006.

HB 1346 - AS INTRODUCED

2006 SESSION

06-2404  
01/03

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 struck through~~].  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.



HB 1346 – AS INTRODUCED

06-2404  
01/03

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Six*

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

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

- 1           1 New Section; Pharmacists and Pharmacies; Prescription Information to be Kept Confidential.
- 2 Amend RSA 318 by inserting after section 47-e the following new section:
- 3           318:47-f Prescription Information to be Kept Confidential. Records relative to prescription
- 4 information containing identifiable patient and prescriber data shall not be transferred or sold by
- 5 any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail,
- 6 mail order, or Internet pharmacy for any commercial purpose, except for the limited purpose of
- 7 reimbursing the pharmacy by the patient’s insurance provider or the provider’s agent. In addition to
- 8 other appropriate remedies under this chapter, a violation of this section is an unfair or deceptive act
- 9 or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be
- 10 used to enforce the provisions of this section.
- 11           2 New Paragraph; Controlled Drug Act; Prescription Information to be Kept Confidential.
- 12 Amend RSA 318-B:12 by inserting after paragraph III the following new paragraph:
- 13           IV. Records relative to prescription information containing identifiable patient and
- 14 prescriber data shall not be transferred or sold by any pharmacy benefits manager, insurance
- 15 company, retail, mail, or Internet pharmacy for any commercial purpose, except for the limited
- 16 purpose of reimbursing the pharmacy by the patient’s insurance provider or the provider’s agent. In
- 17 addition to other appropriate remedies under this chapter, a violation of this paragraph is an unfair
- 18 or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in
- 19 RSA 358-A may be used to enforce the provisions of this paragraph.
- 20           3 Effective Date. This act shall take effect January 1, 2007.

*Submission A*

I reviewed Rep. Rosenwald's handout and would like to emphasize a couple of points.

- Rosewald is opposed to the marketing of pharmaceuticals to physicians and that is her stated purpose for the bill. The lack of access to data will not restrict the marketing of pharmaceuticals. So the intent of the bill will not be achieved.
- Rep. Rosenwald indicates the data will still be available without the prescriber info for research purpose. However without prescriber info it has no commercial value and companies like IMS will not purchase the data. The information IMS receives is in raw form and paid for by the customers of IMS who need refined data including prescriber info for their specific use.
- The state benefits from the refined data for law enforcement purposes, research, drug recall etc. This can only take place if the data is acquired by IMS.
- If the result of this legislation is that the data has no value to the companies who typically purchase the data, then it will not be available for public benefit. IMS will not go through the trouble and expense of acquiring the data because it will have no commercial value.
- Rep. Rosenwald indicated the information can come from PBM's. There is not an individual or group of PBM's that can provide the quality data currently developed under the current system. The bill would put the same restrictions PBMs relative to the commercial use of their data.
- The bill sponsor cannot provide any data that this bill will save the state money. They make the assumption that doctor's prescribing patterns are effected solely by sales people and not what is in the best interest of the patient.
- The bill will not prevent physicians from prescribing expensive drugs or using new drugs etc. The savings assume that the sale forces are convincing doctors to prescribe drugs that they would not normally prescribe.
- IMS does not currently receive any patient identifiable data. The Flanders amendment goes beyond the current HIPAA requirements and actually toughens HIPAA and state law.

- **Rep Rosenwald discounts the AMA opt-out yet it would prevent marketing by pharmaceutical companies to physicians who opt out. Isn't that better then trying to legislate physician behavior as this bill does?**