

Bill as Introduced

SB 287 - AS INTRODUCED

2012 SESSION

12-2839

01/10

SENATE BILL **287**

AN ACT relative to confidential prescription data.

SPONSORS: Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Sen. Boutin, Dist 16; Sen. De Blois, Dist 18; Sen. Luther, Dist 12; Rep. Bettencourt, Rock 4; Rep. Chandler, Carr 1; Rep. Weyler, Rock 8; Rep. W. Smith, Rock 18

COMMITTEE: Health and Human Services

ANALYSIS

This bill implements the ruling of the Supreme Court in *IMS Health Inc. v. Sorrell*, 131 S. Ct. 2653 (2011), which held that a prohibition on the use of prescriber-identifiable data in prescription records for commercial purposes violates the First Amendment.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to confidential prescription data.

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

1 1 Pharmacists and Pharmacies; Prescription Data to be Kept Confidential. Amend RSA 318:47-f
2 to read as follows:

3 318:47-f Prescription [~~Information~~] **Data** to be Kept Confidential. [~~Records relative to~~
4 ~~prescription information containing patient identifiable and prescriber identifiable~~] **Patient-**
5 **identifiable** data **in prescription records** shall not be licensed, transferred, used, or sold by any
6 pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail
7 order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the
8 limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization
9 review by a health care provider, the patient's insurance provider or the agent of either; health care
10 research; or as otherwise provided by law. Commercial purpose includes, but is not limited to,
11 advertising, marketing, promotion, or any activity that could be used to influence sales or market
12 share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual
13 health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing
14 sales force. Nothing in this section shall prohibit the dispensing of prescription medications to a
15 patient or to the patient's authorized representative; the transmission of prescription information
16 between an authorized prescriber and a licensed pharmacy; the transfer of prescription information
17 between licensed pharmacies; the transfer of prescription records that may occur in the event a
18 pharmacy ownership is changed or transferred; care management educational communications
19 provided to a patient about the patient's health condition, adherence to a prescribed course of
20 therapy or other information about the drug being dispensed, treatment options, or clinical trials.
21 Nothing in this section shall prohibit the collection, use, transfer, or sale of patient [~~and prescriber~~]
22 de-identified data by zip code[,] **or** geographic region[~~, or medical specialty~~] for commercial purposes.
23 In addition to other appropriate remedies under this chapter, a violation of this section is an unfair
24 or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in
25 RSA 358-A may be used to enforce the provisions of this section.

26 2 Controlled Drug Act; Prescription Data to be Kept Confidential. Amend RSA 318-B:12, IV to
27 read as follows:

28 IV. [~~Records relative to prescription information containing patient identifiable and~~
29 ~~prescriber identifiable~~] **Patient-identifiable** data **in prescription records** shall not be licensed,
30 transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic
31 transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any

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- Page 2 -

1 commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary
2 compliance; care management; utilization review by a health care provider, the patient's insurance
3 provider or the agent of either; health care research; or as otherwise required by law. Commercial
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17 chapter, a violation of this paragraph is an unfair or deceptive act or practice within the meaning of
18 RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of
19 this paragraph.

20 3 Effective Date. This act shall take effect upon its passage.

SB 287 - AS AMENDED BY THE HOUSE

25Apr2012... 1780h

2012 SESSION

12-2839
01/10

SENATE BILL **287**

AN ACT relative to confidential prescription data and relative to the medical records law.

SPONSORS: Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Sen. Boutin,
Dist 16; Sen. De Blois, Dist 18; Sen. Luther, Dist 12; Rep. Bettencourt, Rock 4;
Rep. Chandler, Carr 1; Rep. Weyler, Rock 8; Rep. W. Smith, Rock 18

COMMITTEE: Health and Human Services

AMENDED ANALYSIS

This bill implements the ruling of the Supreme Court in *IMS Health Inc. v. Sorrell*, 131 S. Ct. 2653 (2011), which held that a prohibition on the use of prescriber-identifiable data in prescription records for commercial purposes violates the First Amendment.

This bill also clarifies the release of a patient's medical information.

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.

SB 287 – AS AMENDED BY THE HOUSE

25Apr2012... 1780h

12-2839
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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twelve

AN ACT relative to confidential prescription data and relative to the medical records law.

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18 RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of
19 this paragraph.

20 3 Statement of Intent. The general court recognizes the significance of a patient's right to
21 privacy as it relates to the entire patient-provider relationship. The general court believes that a
22 patient's right to privacy protection includes the identity of his or her health care provider to insure
23 confidentiality of the patient's diagnosis, treatment, or medical condition. Privacy protection should
24 include the identity of the provider without interfering with the uses authorized by state or federal
25 law. The general court finds that a provider's identity is central to the nature and scope of an
26 individual's medical care. In this era of medical specialization, the identity of a health care provider
27 may clearly identify or imply a medical condition, diagnosis, and treatment course. Because it is the
28 finding of the general court that the patient must be in control of the entire patient-provider
29 relationship, the general court finds that de-identification of a patient from medical information is
30 insufficient to protect the patient's privacy interest in the patient's medical information. It is the
31 intent of the general court to provide only very narrow circumstances when medical information can
32 be disclosed without permission from the patient. The general court finds that the purpose of
33 RSA 332-I is not only to ensure that patients have access to their own medical records, but it also
34 provides for patients' rights to privacy as it relates to the entire patient-provider relationship.

35 4 New Section; Release of Medical Information. Amend RSA 332-I by inserting after section 2
36 the following new section:

37 332-I:2-a Release of Medical Information. Release of medical information to any person, or

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- Page 3 -

1 release by the authorized recipient of medical information, shall be prohibited without written
2 authorization from the patient or the patient's authorized representative except as allowed by state
3 or federal law, including, but not limited, to release as may be necessary for treatment, payment, or
4 health care operations, as those terms are defined in 45 C.F.R. 164.501, or to law enforcement
5 officials for valid law enforcement purposes. For the purposes of this paragraph, "medical
6 information" means information that directly identifies the patient or the patient's health care
7 provider and that relates to a patient's physical, mental, or behavioral condition, personal or family
8 medical history or medical treatment. Medical information does not include information that
9 protects the anonymity of the patient and health care provider by means of encryption or encoding of
10 individual identifiers, or information pertaining to or derived from federally sponsored, authorized,
11 or regulated research governed by 21 C.F.R. parts 50 and 56 and 45 C.F.R. part 46.

12 5 Effective Date. This act shall take effect upon its passage.

Committee Minutes

**SENATE CALENDAR NOTICE
HEALTH AND HUMAN SERVICES**

Senator Jeb Bradley Chairman
 Senator Tom De Blois V Chairman
 Senator Molly Kelly
 Senator Gary Lambert
 Senator Andy Sanborn

For Use by Senate Clerk's Office ONLY	
<input type="checkbox"/>	Bill Status
<input type="checkbox"/>	Docket
<input type="checkbox"/>	Calendar
Proof: <input type="checkbox"/>	Calendar <input type="checkbox"/> Bill Status

Date: January 24, 2012

HEARINGS

Thursday

2/2/2012

HEALTH AND HUMAN SERVICES

LOB 102

1:00 PM

(Name of Committee)

(Place)

(Time)

EXECUTIVE SESSION MAY FOLLOW

1:00 PM	SB284	establishing pilot projects to improve access to oral health care.
1:15 PM	SB286	relative to a controlled drug prescription health and safety program.
1:30 PM	SB287	relative to confidential prescription data.

Sponsors:

SB284

Sen. Gary Lambert
 Sen. Lou D'Allesandro
 Sen. Amanda Merrill

Sen. John Gallus
 Sen. Fenton Groen
 Rep. Mary Gorman

Sen. John Barnes, Jr.
 Sen. Sylvia Larsen
 Rep. James Pilliod

Sen. Sharon Carson
 Sen. Jim Luther

SB286

Sen. Jeb Bradley
 Sen. John Barnes, Jr.
 Sen. David Boutin
 Sen. Lou D'Allesandro
 Sen. Nancy Stiles

Rep. John Reagan
 Sen. Gary Lambert
 Sen. Fenton Groen
 Sen. Sylvia Larsen
 Sen. Jim Luther

Rep. Lynne Ober
 Sen. Bob Odell
 Sen. Molly Kelly
 Sen. Jim Rausch
 Rep. Laurie Harding

Rep. Frank Kotowski
 Sen. Sharon Carson
 Sen. Amanda Merrill
 Sen. Tom De Blois

SB287

Sen. Jeb Bradley
 Rep. William Smith
 Sen. Tom De Blois

Rep. David Bettencourt
 Sen. John Barnes, Jr.
 Sen. Jim Luther

Rep. Gene Chandler
 Sen. Gary Lambert

Rep. Kenneth Weyler
 Sen. David Boutin

Health and Human Services Committee

Hearing Report

Sonja Caldwell, Legislative Aide

SB287 - AN ACT relative to confidential prescription data.

Hearing date: February 2, 2012

Members present: Sen. Bradley, Sen. De Blois, Sen. Lambert, Sen. Sanborn

Members absent: Sen. Kelly

Sponsor(s): Sen. Bradley, Dist 3; Sen. Barnes, Jr., Dist 17; Sen. Lambert, Dist 13; Sen. Boutin, Dist 16; Sen. De Blois, Dist 18; Sen. Luther, Dist 12; Rep. Bettencourt, Rock 4; Rep. Chandler, Carr 1; Rep. Weyler, Rock 8; Rep. W. Smith, Rock 18

What the bill does: This bill implements the ruling of the Supreme Court in *IMS Health Inc. v. Sorrell*, 131 S. Ct. 2653 (2011), which held that a prohibition on the use of prescriber-identifiable data in prescription records for commercial purposes violates the First Amendment.

Who supports the bill: Sen. De Blois, Sen. Luther, Sen. Boutin, Randy Frankel (IMS), Sen. Barnes

Who opposes the bill: No one

Summary of testimony received:

Sen. Bradley

This bill brings NH law into compliance with the recent US Supreme Court decision relative to commercial free speech. Several years ago, NH, Maine and Vermont enacted similar laws, which limited access to the use of prescription data. All three states laws were challenged in federal district courts. Vermont's challenge went to the US Supreme Court and they ruled the VT law unconstitutional because it violated the first amendment. In response to the decision, this bill repeals those portions of the NH law that were deemed unconstitutional. Personal patient information will continue to be maintained in a confidential manner under NH law. The bill does not strike language that keeps patient identifiable information confidential.

Randy Frankel -VP External Affairs IMS Health.

They are a US based company with over 50 years in existence and have a global presence. They provide data, analytic and consulting services. They have 50 employees in Bedford. They collect information from around the country and put it into data bases to serve different stakeholders such as the federal government, states, medical societies, health and academic researchers, commercial entities, payers and provider groups. They measure physician performance. They use double encryption technology and never come into contact with a patient name. They support efforts to improve upon patient privacy.

Sen. Sanborn asked if when collecting physician information they are using it to resell back to vendors.

Mr. Frankel said yes. They collect prescription data, and remove patient names. Physician behavior is critical to determining how care is provided.

Sen. Sanborn asked why they don't maintain physician confidentiality with regard to suppliers.

Mr. Frankel said it helps them identify doctors currently treating a patient with a need for a specific medication.

Speakers

Testimony

Date: February 2, 2012

TESTIMONY OF IMS HEALTH
IN SUPPORT OF
SB 287 – AN ACT Relative to confidential prescription data

Good afternoon Mr. Chairman and Members of the Health and Human Services Committee, I am Randy Frankel, Vice President of External Affairs for IMS Health. I am here to convey our strong support of Senate Bill 287. IMS Health is the world's leading provider of information, research and analysis to the health care industry.

Senate Bill 287 is the culmination of a journey that was begun in 2006. At that time, the New Hampshire General Court considered and approved changes to New Hampshire's Prescription Privacy Act that went beyond the long established privacy protections for an individual's health care information. They did so by imposing restrictions on the use of prescription information that did not identify a patient (patient-anonymous data). At that time, IMS Health testified against the proposals before the Legislature believing more information, not less, was of greater benefit for policy makers, health care professionals and of course, patients.

In essence, we believed that provider level information was an essential component of a systematic approach that leads to better medical practices, and improved quality, safety and patient outcomes. Finally, we argued before the Committee that the proposals violated fundamental constitutional protections of commercial speech under the First Amendment. Legislation was passed nevertheless.

The passage of House Bill 1346 in 2006 forced IMS Health and others to file an action in the Federal District Court in NH to protect First Amendment rights which we believed were violated by the new law. The Federal Court agreed and granted our motion for a preliminary injunction and the Court enjoined, or prohibited, the enforcement of the law. Similar laws and challenges occurred concurrently in Maine and Vermont. No other state in the country passed similar legislation, though as many as 27 considered the issue.

IMS HEALTH

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To make a long story shorter, the Vermont challenge was ultimately accepted by the United States Supreme Court. On June 23, 2011, the Supreme Court issued its decision, finding the Vermont law unconstitutional by violating the First Amendment. In response to this decision and on motion of the parties (the NH Attorney General, IMS Health and others), the New Hampshire Federal District Court entered a judgment that the New Hampshire law violated the First Amendment. Senate Bill 287 repeals those portions of New Hampshire law determined unconstitutional and related provisions made moot and unnecessary by the Courts' rulings

This bill repeals the inconsistent sections and returns New Hampshire law to its place prior to the enactment of House Bill 1346 in 2006. This bill continues to protect the confidentiality of individuals by prohibiting the licensing, use, sale, transfer or exchange for value, for any commercial purpose.

I urge your support of Senate Bill 287 in order to remove the portions of New Hampshire law deemed unconstitutional. Failure to act will leave the unconstitutional provisions on the books, potentially leading to confusion for the public and others who may be unaware of the decisions of the federal courts. I look forward to answering any questions you may have. I again respectfully request your support of Senate Bill 287.

Respectfully submitted,

A handwritten signature in black ink that reads "Randolph Frankel". The signature is written in a cursive, flowing style.

Randolph Frankel
Vice President, IMS Health

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Date: February 17, 2012

THE COMMITTEE ON Health and Human Services

to which was referred Senate Bill 287

AN ACT relative to confidential prescription data.

Having considered the same, the committee recommends that the Bill:

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Andy Sanborn
For the Committee

Sonja Caldwell 271-2117

New Hampshire General Court - Bill Status System

Docket of SB287

Docket Abbreviations

Bill Title: relative to confidential prescription data.*Official Docket of SB287:*

Date	Body	Description
1/1/2012	S	Introduced 1/4/2012 and Referred to Health and Human Services; SJ 1 , Pg.8
1/24/2012	S	Hearing: === TIME CHANGE === 2/2/12, Room 102, LOB, 1:00 p.m.; SC5
2/21/2012	S	Committee Report: Ought to Pass, 3/7/12; SC9
3/7/2012	S	Ought to Pass: MA, VV; OT3rdg; SJ 6 , Pg.158
3/8/2012	H	Introduced and Referred to Health, Human Services and Elderly Affairs; HJ 23 , PG.1448
3/19/2012	H	Public Hearing: 3/27/2012 11:00 AM LOB 205 ==RECESSED==
3/27/2012	H	Continued Public Hearing: 4/3/2012 2:00 PM LOB 205
4/6/2012	H	Subcommittee Work Session: 4/10/2012 2:30 PM LOB 205 ==Recessed==
4/10/2012	H	==Reconvened== Subcommittee Work Session: 4/12/2012 2:00 PM LOB 205
4/10/2012	H	Executive Session: 4/17/2012 10:00 AM LOB 205
4/18/2012	H	Majority Committee Report: Ought to Pass for April 25 (Vote 15-3; RC); HC 33 , PG.1924-1925
4/18/2012	H	Minority Committee Report: Inexpedient to Legislate; HC 33 , PG.1924-1925
4/25/2012	H	Floor Amendment # 2012-1780h (NT) (Rep Kurk), Adopted, RC 226-106
4/25/2012	H	Ought to Pass with Amendment #1780h(NT): MA VV
5/9/2012	S	Sen. Bradley Moved Non-concur with House Amendment 1780h; MA, VV

NH House

NH Senate

Other Referrals

COMMITTEE REPORT FILE INVENTORY

SB287 ORIGINAL REFERRAL _____ RE-REFERRAL

1. THIS INVENTORY IS TO BE SIGNED AND DATED BY THE COMMITTEE AIDE AND PLACED INSIDE THE FOLDER AS THE FIRST ITEM IN THE COMMITTEE FILE.
2. PLACE ALL DOCUMENTS IN THE FOLDER FOLLOWING THE INVENTORY IN THE ORDER LISTED.
3. THE DOCUMENTS WHICH HAVE AN "X" BESIDE THEM ARE CONFIRMED AS BEING IN THE FOLDER.
4. THE COMPLETED FILE IS THEN DELIVERED TO THE CALENDAR CLERK.

- DOCKET (Submit only the latest docket found in Bill Status)
- COMMITTEE REPORT
- CALENDAR NOTICE
- HEARING REPORT
- HANDOUTS FROM THE PUBLIC HEARING
- PREPARED TESTIMONY AND OTHER SUBMISSIONS
- SIGN-UP SHEET(S)

ALL AMENDMENTS (passed or not) CONSIDERED BY COMMITTEE:

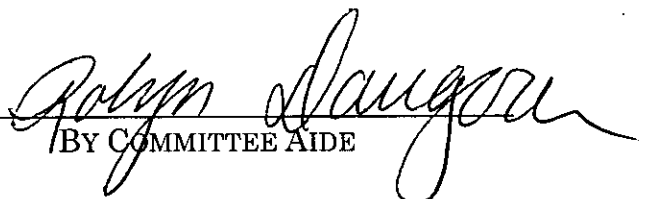
____ - AMENDMENT # _____ ____ - AMENDMENT # _____
____ - AMENDMENT # _____ ____ - AMENDMENT # _____

ALL AVAILABLE VERSIONS OF THE BILL:

AS INTRODUCED AS AMENDED BY THE HOUSE
 FINAL VERSION AS AMENDED BY THE SENATE

____ OTHER (Anything else deemed important but not listed above, such as amended fiscal notes): _____

DATE DELIVERED TO SENATE CLERK 5/31/12


BY COMMITTEE AIDE