

SENATE NO. 1275

AN ACT PROTECTING THE CONFIDENTIALITY OF PATIENT PRESCRIPTION RECORDS

*Be it enacted by the Senate and House of Representatives in General Court assembled,
And by the authority of the same, as follows:*

1 SECTION 1. Chapter 94C of the general laws, as most recently appearing in the 2004 Official
2 Edition, is hereby amended by inserting after section 34, the following new section: -

3 Section 34A. Unlawful Use of Prescription Information.

4 (a) No person, including any pharmacy benefits manager, insurance company, electronic
5 transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, shall
6 license, transfer, use, sell or lease records relative to prescription information containing patient-
7 identifiable and prescriber-identifiable data, for any commercial purpose, except for the limited
8 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
10 care research; or as otherwise provided by law. For purpose of this section, a prescriber is any
11 health care professional legally authorized to issue prescriptions for medication. Commercial
12 purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that
13 could be used to influence sales or market share of a pharmaceutical product, influence or
14 evaluate the prescribing behavior of an individual health care professional, or evaluate the

15 effectiveness of a professional pharmaceutical detailing sales force. Nothing in this section shall
16 prohibit the dispensing of prescription medications to a patient or to the patient's authorized
17 representative; the transmission of prescription information between an authorized prescriber
18 and a licensed pharmacy; the transfer of prescription information between licensed pharmacies;
19 the transfer of prescription records that may occur in the event a pharmacy ownership is
20 changed or transferred; care management educational communications provided to a patient
21 about the patient's health condition, adherence to a prescribed course of therapy or other
22 information about the drug being dispensed, treatment options, or clinical trials. Nothing in this
23 section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified
24 data by zip code, geographic region, or medical specialty for commercial purposes.

25 (b) Whoever violates any provision of this section shall be punished by imprisonment in the
26 state prison for not more than four years or in a house of correction for not more than two and
27 one half years or by a fine of not more than twenty thousand dollars, or by both such fine and
28 imprisonment. Whoever violates any provision of this section after one or more prior
29 convictions of a violation of this section, or of a felony under any other provision of this
30 chapter, or under a provision of prior law relative to the sale or manufacture of a narcotic drug
31 or a harmful drug as defined in said earlier law shall be punished by imprisonment in the state
32 prison for not more than eight years or in a jail or house of correction for not more than two and
33 one half years, or by a fine of not more than thirty thousand dollars or by both such fine and
34 imprisonment.

35 (c) In addition to other appropriate remedies under this chapter, a violation of this section is an
36 unfair or deceptive act or practice within the meaning of section 2 of chapter 93A of the general

37 laws. Any right or remedy set forth in chapter 93A may be used to enforce the provisions of this
38 section.

39 SECTION 2. This act shall take effect upon passage.