

103<sup>D</sup> CONGRESS  
2<sup>D</sup> SESSION

# S. 2129

To amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 18 (legislative day, MAY 16), 1994

Mr. LEAHY (for himself, Mr. RIEGLE, and Mr. WOFFORD) introduced the following bill; which was read the first time

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## A BILL

To amend title 18, United States Code, to preserve personal privacy with respect to medical records and health care-related information, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Health Care Privacy  
5 Protection Act”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—The Congress finds as follows:

1           (1) The right to privacy is a personal and fun-  
2           damental right protected by the Constitution of the  
3           United States.

4           (2) The improper disclosure of personally iden-  
5           tifiable health care information may cause signifi-  
6           cant harm to a person's interest in privacy, health  
7           care, and reputation and may unfairly affect the  
8           ability of a person to obtain employment, education,  
9           insurance, and credit.

10          (3) The movement of people and health care-re-  
11          lated information across State lines, availability of  
12          access to and exchange of health care-related infor-  
13          mation from automated data banks and networks,  
14          and emergence of multistate health care providers  
15          and payors create a need for uniform Federal law  
16          governing the disclosure of health care information.

17          (b) PURPOSE.—The purpose of this Act is to estab-  
18          lish effective mechanisms to protect the privacy of persons  
19          with respect to personally identifiable health care informa-  
20          tion that is created or maintained as part of health treat-  
21          ment, enrollment, payment, or testing processes.

1                   **TITLE I—JUDICIAL**  
 2                   **PROCEEDINGS**

3   **SEC. 101. PRIVACY OF PERSONALLY IDENTIFIABLE HEALTH**  
 4                   **CARE INFORMATION.**

5           (a) OFFENSE.—Part I of title 18, United States  
 6 Code, is amended by inserting after chapter 84, the follow-  
 7 ing new chapter:

8   **“CHAPTER 84A—PRIVACY OF PERSON-**  
 9           **ALLY IDENTIFIABLE HEALTH CARE IN-**  
 10           **FORMATION**

“Sec.

“1755. Wrongful disclosure of personally identifiable health care information.

“1756. Misuse of health security card or unique identifier.

11   **“§1755. Wrongful disclosure of protected health in-**  
 12           **formation**

13           “(a) DEFINITIONS.—

14                   “(1) PROTECTED HEALTH INFORMATION.—The  
 15 term “protected health information” means any in-  
 16 formation, whether oral or recorded in any form or  
 17 medium, that—

18                           “(A)(i) is created or received by a health  
 19 care provider, health benefit plan, health over-  
 20 sight agency, public health authority, or re-  
 21 gional data center; or

1           “(ii) is created or received by an employer  
2 through the process of testing or screening ap-  
3 plicants or employees; and

4           “(B) relates to the past, present, or future  
5 physical or mental health or condition of an in-  
6 dividual, the provision of health care to an indi-  
7 vidual or payment for the provision of health to  
8 an individual and—

9           “(i) identifies the individual; or

10           “(ii) with respect to which there is a  
11 reasonable basis to believe that the infor-  
12 mation can be used to identify the individ-  
13 ual.

14           “(2) HEALTH CARE.—The term ‘health care’—

15           “(A) means—

16           “(i) a preventative, diagnostic, thera-  
17 peutic rehabilitative, maintenance, or pal-  
18 liative care, counseling, service, or proce-  
19 dure—

20           “(I) with respect to the physical  
21 or mental condition of an individual;  
22 or

23           “(II) affecting the structure of  
24 function of the human body or any  
25 part of the human body; or

1           “(ii) any sale or dispensing of a drug,  
2           device, equipment, or other item to an indi-  
3           vidual, or for the use of an individual, pur-  
4           suant to a prescription; and

5           “(B) does not include any item or service  
6           that is not furnished for the purpose of examin-  
7           ing, maintaining or improving the health of an  
8           individual.

9           “(b) OFFENSE.—A person who knowingly—

10           “(1) obtains protected health information relat-  
11           ing to an individual in violation of title II of the  
12           Health Care Privacy Protection Act; or

13           “(2) discloses protected health information to  
14           another person in violation of title II of the Health  
15           Care Privacy Protection Act,

16 shall be punished as provided in subsection (c).

17           “(c) PENALTIES.—A person who violates subsection  
18 (b) shall—

19           “(1) be fined not more than \$50,000, impris-  
20           oned not more than 1 year, or both;

21           “(2) if the offense is committed under false pre-  
22           tenses, be fined not more than \$100,000, imprisoned  
23           not more than 5 years, or both; and

24           “(3) if the offense is committed with intent to  
25           sell, transfer, or use protected health information for

1 commercial advantage, personal gain, or malicious  
 2 harm, fined not more than \$250,000, imprisoned not  
 3 more than 10 years, or both.

4 **“§1756. Misuse of health security card or unique**  
 5 **identifier**

6 “A person who—

7 “(1) requires the display of, requires the use of,  
 8 or uses a health security card that is issued under  
 9 section 1001(b) of the Health Security Act for any  
 10 purpose other than a purpose described in section  
 11 5105(a) of that Act; or

12 “(2) requires the disclosure of, requires the use  
 13 of, or uses a unique identifier number provided  
 14 under section 5104 of that Act for any purpose that  
 15 is not authorized by the National Health Board pur-  
 16 suant to that section,

17 shall be fined not more than \$25,000, imprisoned not  
 18 more than 2 years, or both.”.

19 (b) TECHNICAL AMENDMENT.—The part analysis for  
 20 part I of title 18, United States Code, is amended by in-  
 21 serting after the item related to chapter 84, the following  
 22 new item:

“84A. Privacy of personally identifiable health care information ..... 1755.”.

1 **TITLE II—LIMITATIONS ON DIS-**  
2 **CLOSURE OF PROTECTED**  
3 **HEALTH INFORMATION**

4 **SEC. 201. DEFINITIONS.**

5 In this title:

6 (1) HEALTH BENEFIT PLAN.—The term  
7 “health benefit plan” means a public or private en-  
8 tity or program that provides payments for health  
9 care or that provides life insurance—

10 (A) including—

11 (i) a group health plan (as defined in  
12 section 607 of the Employee Retirement  
13 Income Security Act of 1974 (29 U.S.C.  
14 1167)), employer self-insurance plan, or a  
15 multiple employer welfare arrangement (as  
16 defined in section 3 of that Act (29 U.S.C.  
17 1002)) providing health benefits;

18 (ii) any other health insurance ar-  
19 rangement, including any arrangement  
20 consisting of a hospital or medical expense  
21 incurred policy or certificate, hospital or  
22 medical service plan contract, health main-  
23 tenance organization subscriber contract;  
24 and

25 (iii) a life insurance plan;

1 (B) but not including—

2 (i) an individual who makes a pay-  
3 ment on the individual’s own behalf (or on  
4 behalf of any other individual) for health  
5 care or for deductibles, coinsurance,  
6 copayments, items, or services not covered  
7 under a health insurance arrangement;

8 (ii) a plan sponsor (as defined in sec-  
9 tion 3 of the Employee Retirement Income  
10 Security Act of 1974 (29 U.S.C. 1002));

11 (iii) an employer of an employee cov-  
12 ered under a multiple employer welfare ar-  
13 rangement;

14 (iv) an employee organization that  
15 sponsors a multiple employer welfare ar-  
16 rangement; or

17 (v) an organization, association, com-  
18 mittee, joint board of trustees, or similar  
19 group of representatives of 2 or more em-  
20 ployers described in clause (iii) or 2 or  
21 more employee organizations described in  
22 clause (iv).

23 (2) HEALTH CARE.—The term “health care”—

24 (A) means—

1 (i) a preventative, diagnostic, thera-  
2 peutic, rehabilitative, maintenance, or pal-  
3 liative care, counseling, service, or proce-  
4 dure—

5 (I) with respect to the physical or  
6 mental condition of an individual; or

7 (II) affecting the structure or  
8 function of the human body or any  
9 part of the human body; or

10 (ii) any sale or dispensing of a drug,  
11 device, equipment, or other item to an indi-  
12 vidual, or for the use of an individual, pur-  
13 suant to a prescription; but

14 (B) does not include any item or service  
15 that is not furnished for the purpose of examin-  
16 ing, maintaining, or improving the health of an  
17 individual.

18 (3) HEALTH CARE PROVIDER.—The term  
19 “health care provider” means a person who is li-  
20 censed, certified, registered, or otherwise authorized  
21 by law to provide an item or service that constitutes  
22 health care in the ordinary course of business or  
23 practice of a profession.

24 (4) HEALTH INFORMATION TRUSTEE.—The  
25 term “health information trustee” means—

1 (A) a health care provider, health benefit  
2 plan, health oversight agency, regional data  
3 center, or employer, insofar as it creates, re-  
4 ceives, maintains, uses, or transmits protected  
5 health information; and

6 (B) any person who obtains protected  
7 health information under section 207, 208, 209,  
8 210, 211, 212, or 215.

9 (5) HEALTH OVERSIGHT AGENCY.—The term  
10 “health oversight agency” means a person that—

11 (A) performs or oversees the performance  
12 of an assessment, evaluation, determination, or  
13 investigation relating to the licensing, accredita-  
14 tion, or certification of health care providers; or

15 (B)(i) performs or oversees the perform-  
16 ance of an assessment, evaluation, determina-  
17 tion, or investigation relating to the effective-  
18 ness of, compliance with, or applicability of  
19 legal, fiscal, medical, or scientific standards or  
20 aspects of performance related to the delivery  
21 of, or payment for, health care or relating to  
22 health care fraud or fraudulent claims for pay-  
23 ment regarding health; and

24 (ii) is a public agency, acting on behalf of  
25 a public agency, acting pursuant to a require-

1           ment of a public agency, or carrying out activi-  
2           ties under a Federal or State statute governing  
3           the assessment, evaluation, determination, or  
4           investigation.

5           (6) HEALTH RESEARCHER.—The term “health  
6           researcher” means a person who conducts a bio-  
7           medical, epidemiological, or health services research  
8           project or a health statistics project that has been  
9           approved by—

10                   (A) an institutional review board for the  
11                   organization sponsoring the project;

12                   (B) an institutional review board for each  
13                   health information trustee that maintains pro-  
14                   tected health information intended to be used in  
15                   the project; or

16                   (C) an institutional review board estab-  
17                   lished or designated by the Secretary.

18           (7) INSTITUTIONAL REVIEW BOARD.—The term  
19           “institutional review board” means—

20                   (A) a board established in accordance with  
21                   regulations of the Secretary under section  
22                   491(a) of the Public Health Service Act (42  
23                   U.S.C. 289);

1 (B) a similar board established by the Sec-  
2 retary for the protection of human subjects in  
3 research conducted by the Secretary; or

4 (C) a similar board established under regu-  
5 lations of a Federal Government authority other  
6 than the Secretary.

7 (8) LAW ENFORCEMENT INQUIRY.—The term  
8 “law enforcement inquiry” means an investigation or  
9 official proceeding inquiring into whether there is a  
10 violation of, or failure to comply with, any criminal  
11 or civil statute or any regulation, rule, or order is-  
12 sued pursuant to such a statute.

13 (9) PERSON.—The term “person” includes an  
14 authority of the United States, a State, or a political  
15 subdivision of a State.

16 (10) PROTECTED HEALTH INFORMATION.—The  
17 term “protected health information” means any in-  
18 formation, whether oral or recorded in any form or  
19 medium, that—

20 (A)(i) is created or received by a health  
21 care provider, health benefit plan, health over-  
22 sight agency, public health authority, or re-  
23 gional data center; or

1           (ii) is created or received by an employer  
2 through the process of testing or screening ap-  
3 plicants or employees; and

4           (B) relates to the past, present, or future  
5 physical or mental health or condition of a per-  
6 son, the provision of health care to a person, or  
7 payment for the provision of health care to an  
8 individual and—

9           (i) identifies the individual; or

10           (ii) with respect to which there is a  
11 reasonable basis to believe that the infor-  
12 mation can be used to identify the individ-  
13 ual.

14           (11) PUBLIC HEALTH AUTHORITY.—The term  
15 “public health authority” means an authority or in-  
16 strumentality of the United States, a State, or a po-  
17 litical subdivision of a State that is (A) responsible  
18 for public health matters; and (B) engaged in such  
19 activities as injury reporting, public health surveil-  
20 lance, and public health investigation or interven-  
21 tion.

22           (12) REGIONAL DATA CENTER.—The term “re-  
23 gional data center” means—

1 (A) an entity established in accordance  
2 with the Health Security Act and designated as  
3 such by the Secretary;

4 (B) an entity that receives, maintains,  
5 uses, or transmits information regarding health  
6 for payment, statistical, or research purposes.

7 (13) SECRETARY.—The term “Secretary”  
8 means the Secretary of Health and Human Services.

9 (14) STATE.—The term “State” includes the  
10 District of Columbia, Puerto Rico, the Virgin Is-  
11 lands, Guam, American Samoa, and the Northern  
12 Mariana Islands.

13 **SEC. 202. GENERAL LIMITATIONS ON DISCLOSURE.**

14 (a) IN GENERAL.—

15 (1) DISCLOSURE WITHIN A TRUSTEE.—A  
16 health information trustee may disclose protected  
17 health information to an officer, employee, or agent  
18 of the trustee only for a purpose that is compatible  
19 with and related to the purpose for which the infor-  
20 mation—

21 (A) was collected; or

22 (B) was received by that trustee.

23 (2) DISCLOSURE OUTSIDE A TRUSTEE.—A  
24 health information trustee may disclose protected  
25 health information to a person other than an officer,

1 employee, or agent of the trustee only for a purpose  
2 that is authorized under this Act.

3 (3) SCOPE OF DISCLOSURE.—

4 (A) IN GENERAL.—Every disclosure of pro-  
5 tected health information by a health informa-  
6 tion trustee shall be limited to the minimum  
7 amount of information necessary to accomplish  
8 the purpose for which the information is dis-  
9 closed.

10 (B) GUIDELINES.—Not later than July 1,  
11 1996, the Attorney General, in consultation  
12 with the Secretary, after notice and opportunity  
13 for public comment, shall issue guidelines to im-  
14 plement subparagraph (A), which shall take  
15 into account the technical capabilities of the  
16 record systems used to maintain protected  
17 health information and the costs of limiting dis-  
18 closure.

19 (4) IDENTIFICATION OF DISCLOSED INFORMA-  
20 TION AS PROTECTED INFORMATION.—Except with  
21 respect to protected health information that is dis-  
22 closed under section 217, and except as provided in  
23 paragraph (5), a health information trustee may not  
24 disclose protected health information unless such in-

1       formation is clearly identified as protected health in-  
2       formation that is subject to this section.

3           (5) ROUTINE DISCLOSURES SUBJECT TO WRIT-  
4       TEN AGREEMENT.—A health information trustee  
5       who routinely discloses protected health information  
6       to a person may satisfy the identification require-  
7       ment in paragraph (4) through a written agreement  
8       between the trustee and the person with respect to  
9       the protected health information.

10          (6) AGREEMENT TO LIMIT DISCLOSURE.—A  
11       health information trustee who receives protected  
12       health information from any person pursuant to a  
13       written agreement to restrict disclosure of the infor-  
14       mation to a greater extent than would otherwise be  
15       required under this section shall comply with the  
16       terms of the agreement, except in circumstances in  
17       which disclosure of the information is required by  
18       law notwithstanding the agreement.

19          (7) NO GENERAL REQUIREMENT TO DIS-  
20       CLOSE.—Except as provided in the section 217 re-  
21       lating to inspection, nothing in this section shall be  
22       construed to require a health information trustee to  
23       disclose protected health information not otherwise  
24       required to be disclosed by law.

1 (b) DISCLOSURE BY OFFICER, EMPLOYEE, OR  
2 AGENT.—No officer, employee, or agent of a health infor-  
3 mation trustee may disclose protected health information,  
4 except insofar as the health information trustee is per-  
5 mitted to disclose such information for a purpose that is  
6 authorized under this Act.

7 **SEC. 203. AUTHORIZATIONS FOR DISCLOSURE OF PRO-**  
8 **TECTED HEALTH INFORMATION.**

9 (a) WRITTEN AUTHORIZATIONS.—A health informa-  
10 tion trustee may disclose protected health information  
11 pursuant to an authorization executed by the individual  
12 who is the subject of the information, if each of the follow-  
13 ing requirements is met:

14 (1) WRITING.—The authorization is in writing,  
15 signed by the individual who is the subject of the in-  
16 formation, and dated on the date of such signature.

17 (2) SEPARATE FORM.—The authorization is not  
18 on a form used to authorize or facilitate the provi-  
19 sion of, or payment for, health care.

20 (3) TRUSTEE DESCRIBED.—The trustee is spe-  
21 cifically named or generically described in the au-  
22 thorization as authorized to disclose such informa-  
23 tion.

24 (4) RECIPIENT DESCRIBED.—The person to  
25 whom the information is to be disclosed is specifi-

1 cally named or generically described in the author-  
2 ization as a person to whom such information may  
3 be disclosed.

4 (5) STATEMENT OF INTENDED DISCLOSURES.—

5 The authorization contains an acknowledgment that  
6 the individual who is the subject of the information  
7 has received a statement of the disclosures that the  
8 person to receive the protected health information  
9 intends to make, which statement shall be in writ-  
10 ing, on a form that is distinct from the authorization  
11 for disclosure, and which statement must be received  
12 by the individual authorizing the disclosure on or be-  
13 fore such authorization is executed.

14 (6) INFORMATION DESCRIBED.—The informa-  
15 tion to be disclosed is described in the authorization.

16 (7) AUTHORIZATION TIMELY RECEIVED.—The  
17 authorization is received by the trustee during a pe-  
18 riod described in subsection (c)(1).

19 (8) DISCLOSURE TIMELY MADE.—The disclo-  
20 sure occurs during a period described in subsection  
21 (c)(2).

22 (b) AUTHORIZATIONS REQUESTED IN CONNECTION  
23 WITH PROVISION OF HEALTH CARE.—

24 (1) IN GENERAL.—A health information trustee  
25 may not request that an individual person provide to

1 any other person an authorization described in sub-  
2 section (a) on a day on which—

3 (A) the trustee provides health care to the  
4 individual requested to provide the authoriza-  
5 tion; or

6 (B) in the case of a trustee that is a health  
7 facility, the individual is admitted into the facil-  
8 ity as a resident or inpatient in order to receive  
9 health care.

10 (2) EXCEPTION.—Paragraph (1) does not apply  
11 if a health information trustee requests that an indi-  
12 vidual provide an authorization described in sub-  
13 section (a) for the purpose of assisting the individual  
14 in obtaining counseling or social services from a per-  
15 son other than the trustee.

16 (c) TIME LIMITATIONS ON AUTHORIZATIONS.—

17 (1) RECEIPT BY TRUSTEE.—For purposes of  
18 subsection (a)(7), an authorization is timely received  
19 if it is received by the trustee during—

20 (A) the 1-year period beginning on the  
21 date on which the authorization is signed under  
22 subsection (a)(1), if the authorization permits  
23 the disclosure of protected health information to  
24 a person who provides health counseling or so-  
25 cial services to individuals; or

1 (B) the 30-day period beginning on the  
2 date on which the authorization is signed under  
3 subsection (a)(1), if the authorization permits  
4 the disclosure of protected health information to  
5 a person other than a person described in sub-  
6 paragraph (A).

7 (2) DISCLOSURE BY TRUSTEE.—For purposes  
8 of subsection (a)(8), a disclosure is timely made if  
9 it occurs before—

10 (A) the date or event (if any) specified in  
11 the authorization upon which the authorization  
12 expires; and

13 (B) the expiration of the 6-month period  
14 beginning on the date on which the trustee re-  
15 ceives the authorization.

16 (d) REVOCATION OR AMENDMENT OF AUTHORIZA-  
17 TION.—

18 (1) IN GENERAL.—An individual may in writing  
19 revoke or amend an authorization described in sub-  
20 section (a), in whole or in part, at any time, except  
21 when—

22 (A) disclosure of protected health informa-  
23 tion has been authorized to permit validation of  
24 expenditures for health care; or

1 (B) action has been taken in reliance on  
2 the authorization.

3 (2) NOTICE OF REVOCATION.—A health infor-  
4 mation trustee who discloses protected health infor-  
5 mation pursuant to an authorization that has been  
6 revoked shall not be subject to any liability or pen-  
7 alty under this title if—

8 (A) the reliance was in good faith;

9 (B) the trustee had no notice of the rev-  
10 ocation; and

11 (C) the disclosure was otherwise in accord-  
12 ance with the requirements of this title.

13 (e) MODEL AUTHORIZATIONS.—Not later than July  
14 1, 1996, the Attorney General, in consultation with the  
15 Secretary, after notice and opportunity for public com-  
16 ment, shall develop and disseminate model written author-  
17 izations of the type described in subsection (a) and model  
18 statements of intended disclosures of the type described  
19 in paragraph (a)(5).

20 (f) EFFECT OF AUTHORIZATION ON PRIVILEGES.—  
21 The execution by an individual of an authorization that  
22 meets the requirements of this section for the purpose of  
23 receiving health care or providing for the payment for  
24 health care shall not be construed to affect any privilege

1 that the individual may have under common or statutory  
2 law in a court of a State or the United States.

3 (g) ADDITIONAL REQUIREMENTS OF TRUSTEE.—A  
4 health information trustee may impose requirements for  
5 an authorization that are in addition to the requirements  
6 in this subsection.

7 (h) COPY.—A health information trustee who dis-  
8 closes protected health information pursuant to an author-  
9 ization under this section shall maintain a copy of the au-  
10 thorization as part of the information.

11 (i) RULE OF CONSTRUCTION.—This section shall not  
12 be construed—

13 (1) to require a health information trustee to  
14 disclose protected health information; or

15 (2) to limit the right of a health information  
16 trustee to charge a fee for the disclosure or repro-  
17 duction of protected health information.

18 (j) SUBPOENAS.—If a health information trustee dis-  
19 closes protected health information pursuant to an author-  
20 ization in order to comply with a subpoena, the authoriza-  
21 tion—

22 (1) shall specifically authorize the disclosure for  
23 the purpose of permitting the trustee to comply with  
24 the subpoena; and

1           (2) shall otherwise meet the requirements in  
2           this subsection.

3 **SEC. 204. TREATMENT AND PAYMENT.**

4           (a) IN GENERAL.—(1) A health care provider, health  
5 benefit plan, employer, or person that receives protected  
6 health information under section 208 may disclose pro-  
7 tected health information to a health care provider for the  
8 purpose of providing health care to an individual and the  
9 individual who is the subject of the information has not  
10 previously objected to the disclosure in writing.

11          (2) A health care provider, health benefit plan, em-  
12 ployer, regional data center or person that receives pro-  
13 tected health information under section 208 may disclose  
14 protected health information to a health benefit plan for  
15 the purpose of providing for the payment for health care  
16 furnished to an individual.

17          (3) A health care provider, or health benefit plan or  
18 person that receives protected health information under  
19 section 208 may disclose protected health information to  
20 a regional data center for the purpose of carrying out its  
21 functions.

22          (b) SCOPE OF DISCLOSURE.—The disclosure of pro-  
23 tected health information under this section shall be lim-  
24 ited to the minimum amount necessary to accomplish the  
25 purpose for which the disclosure is authorized.

1 **SEC. 205. OVERSIGHT.**

2 (a) IN GENERAL.—A health information trustee may  
3 disclose protected health information to a health oversight  
4 agency for a purpose authorized by law.

5 (b) SCOPE OF DISCLOSURE.—The disclosure of pro-  
6 tected health information under this section shall be lim-  
7 ited to the minimum amount necessary to accomplish the  
8 purpose for which the disclosure is authorized.

9 (c) USE IN ACTION AGAINST INDIVIDUALS.—Pro-  
10 tected health information about an individual that is dis-  
11 closed under this section may not be used in, or disclosed  
12 to any person for use in, any administrative, civil, or crimi-  
13 nal action or investigation directed against the individual  
14 who is the subject of the information, except in an action  
15 or investigation arising out of and directly related to re-  
16 ceipt of health care or payment for health care or an ac-  
17 tion involving a fraudulent claim related to health.

18 **SEC. 206. NEXT OF KIN AND DIRECTORY INFORMATION.**

19 (a) NEXT OF KIN.—A health care provider or person  
20 that receives protected health information under section  
21 208 may disclose protected health information to the next  
22 of kin or legal representative (as defined under State law)  
23 of the individual who is the subject of the information or  
24 to an individual with whom that individual has a personal  
25 relationship if—

1           (1) the individual who is the subject of the in-  
2           formation has not previously objected to the disclo-  
3           sure after being notified of the right to object; and

4           (2) the information disclosed relates to health  
5           care currently being provided to that individual.

6           (b) DIRECTORY INFORMATION.—A health care pro-  
7           vider and a person receiving protected health information  
8           under section 208 may disclose information to any person  
9           if—

10           (1) the information does not reveal specific in-  
11           formation about the physical or mental condition of  
12           the individual who is the subject of the information  
13           or health care provided to that person;

14           (2) the individual who is the subject of the in-  
15           formation has not objected in writing to the disclo-  
16           sure after being notified of the right to object; and

17           (3) the information consists only of 1 or more  
18           of the following items:

19                   (A) The name of the individual who is the  
20                   subject of the information.

21                   (B) If the individual who is the subject of  
22                   the information is receiving health care from a  
23                   health care provider on a premises controlled by  
24                   the provider—

1 (i) the location of the individual on  
2 the premises; and

3 (ii) the general health status of the in-  
4 dividual, described as critical, poor, fair,  
5 stable, or satisfactory or in terms denoting  
6 similar conditions.

7 (c) IDENTIFICATION OF DEAD PERSON.—A health  
8 information trustee may disclose protected health informa-  
9 tion if necessary to assist in the identification of a dead  
10 person.

11 **SEC. 207. PUBLIC HEALTH.**

12 (a) IN GENERAL.—A health care provider, health  
13 benefit plan, public health authority, employer, or person  
14 that receives protected health information under section  
15 208 may disclose protected health information to a public  
16 health authority or other person authorized by law for use  
17 in legally authorized—

18 (1) disease or injury reporting;

19 (2) public health surveillance; or

20 (3) public health investigation or intervention.

21 (b) SCOPE OF DISCLOSURE.—The disclosure of pro-  
22 tected health information under this section shall be lim-  
23 ited to the minimum amount necessary to accomplish the  
24 purpose for which the disclosure is authorized.

1 **SEC. 208. EMERGENCY CIRCUMSTANCES.**

2 (a) IN GENERAL.—A health care provider, health  
3 benefit plan, employer, or person that receives protected  
4 health information under section 208 may disclose pro-  
5 tected health information in emergency circumstances  
6 when necessary to protect the health or safety of an indi-  
7 vidual from imminent harm.

8 (b) SCOPE OF DISCLOSURE.—The disclosure of pro-  
9 tected health information under this section shall be lim-  
10 ited to the minimum amount necessary to accomplish the  
11 purpose for which the disclosure is authorized and shall  
12 be limited to persons who need the information to protect  
13 the health or safety of the individual.

14 (c) USE IN ACTION AGAINST INDIVIDUAL.—Pro-  
15 tected health information about an individual that is dis-  
16 closed under this section may not be used in, or disclosed  
17 to any person for use in, any administrative, civil, or crimi-  
18 nal action or investigation directed against the individual  
19 except when the use or disclosure is authorized by law for  
20 protection of the public health.

21 **SEC. 209. JUDICIAL AND ADMINISTRATIVE PURPOSES.**

22 (a) IN GENERAL.—A health care provider, health  
23 benefit plan, health oversight agency, employer, and per-  
24 son that receives protected health information under sec-  
25 tion 208 may disclose protected health information—

1           (1) pursuant to the Federal Rules of Civil Pro-  
2           cedure, the Federal Rules of Criminal Procedure, or  
3           comparable rules of other courts or administrative  
4           agencies in connection with litigation or proceedings  
5           to which the individual who is the subject of the in-  
6           formation is a party and in which the individual has  
7           placed the individual's physical or mental condition  
8           in issue;

9           (2) if ordered by a court in connection with an  
10          examination of an individual; or

11          (3) pursuant to a law requiring the reporting of  
12          specific medical information to law enforcement au-  
13          thorities.

14          (b) SCOPE OF DISCLOSURE.—The disclosure of pro-  
15          tected health information under this section shall be lim-  
16          ited to the minimum amount necessary to accomplish the  
17          purpose for which the disclosure is authorized.

18          (c) LIMIT ON ADDITIONAL DISCLOSURE.—A person  
19          that receives protected health information under this sec-  
20          tion may use the information and disclose such informa-  
21          tion only for the purpose for which it was received.

22          **SEC. 210. HEALTH RESEARCH.**

23          (a) IN GENERAL.—A health information trustee may  
24          disclose protected health information to a health re-  
25          searcher if the disclosure is for use in a health research

1 project that has been determined by an institutional re-  
2 view board to be—

3 (1) of sufficient importance to outweigh the in-  
4 trusion into the privacy of the individual who is the  
5 subject of the information that would result from the  
6 disclosure; and

7 (2) necessary for the effectiveness of the  
8 project.

9 (b) OBLIGATIONS OF RECIPIENT.—A person who re-  
10 ceives protected health information pursuant to subsection  
11 (a)—

12 (1) shall remove or destroy, at the earliest op-  
13 portunity consistent with the purposes of the project,  
14 information that would enable an individual to be  
15 identified, unless—

16 (A) an institutional review board has de-  
17 termined that there is a health or research jus-  
18 tification for retention of such identifiers; and

19 (B) there is an adequate plan to protect  
20 the identifiers from disclosure that is inconsis-  
21 tent with this section.

22 (2) shall use protected health information solely  
23 for purposes of the health research project for which  
24 disclosure was authorized under this section.

1 (c) SCOPE OF DISCLOSURE.—The disclosure of pro-  
2 tected health information under this section shall be lim-  
3 ited to the minimum amount necessary to accomplish the  
4 research purpose for which the disclosure is authorized.

5 (d) RESEARCH REQUIRING DIRECT CONTACT.—Pro-  
6 tected health information may not be disclosed to a health  
7 researcher for a research project that includes direct con-  
8 tact with an individual who is the subject of protected  
9 health information unless the individual who is the subject  
10 of the protected health information has been given notice  
11 by the health information trustee that such contact is pos-  
12 sible and been given the opportunity to object to the dis-  
13 closure and the individual has not objected.

14 **SEC. 211. LAW ENFORCEMENT.**

15 (a) IN GENERAL.—A health care provider, health  
16 benefit plan, health oversight agency, health researcher,  
17 employer, or other person that receives protected health  
18 information under section 208 may disclose protected  
19 health information to a law enforcement agency (other  
20 than a health oversight agency governed by section 205)  
21 if the information is requested for use—

22 (1) in an investigation or prosecution of a  
23 health information trustee;

1           (2) in the identification or location of a victim,  
2           suspect, fugitive, or witness in a law enforcement in-  
3           quiry; or

4           (3) in connection with the investigation of  
5           criminal activity committed against the trustee or on  
6           premises controlled by the trustee.

7           (b) CERTIFICATION.—When a law enforcement agen-  
8           cy (other than a health oversight agency) requests a health  
9           information trustee disclose protected health information  
10          under this subsection, the law enforcement agency shall  
11          provide the trustee with a written certification that—

12           (1) specifies the information requested;

13           (2) states that the information is needed for a  
14          lawful purpose under this section; and

15           (3) is signed by a supervisory official of a rank  
16          designated by the head of the agency.

17          (c) SCOPE OF DISCLOSURE.—The disclosure of pro-  
18          tected health information under this section shall be lim-  
19          ited to the minimum amount necessary to accomplish the  
20          purpose for which the disclosure is authorized.

21          (d) RESTRICTIONS ON ADDITIONAL DISCLOSURE.—  
22          Protected health information about an individual that is  
23          disclosed to a law enforcement agency under this section—

24           (1) may not be disclosed for, or used in, any  
25          administrative, civil, or criminal action or investiga-

1       tion against the individual, except in an action or in-  
2       vestigation arising out of and directly related to the  
3       action or investigation for which the information was  
4       obtained; and

5               (2) may not be otherwise used or disclosed by  
6       the law enforcement agency, unless the use or disclo-  
7       sure is necessary to fulfill the purpose for which the  
8       information was obtained and is not otherwise pro-  
9       hibited by law.

10 **SEC. 212. SUBPOENAS AND WARRANTS.**

11       (a) IN GENERAL.—A health care provider, health  
12       benefit plan, health oversight agency, employer, or person  
13       that receives protected health information under section  
14       208 may disclose protected health information under this  
15       section if the disclosure is pursuant to—

16               (1) a subpoena issued under the authority of a  
17       grand jury, and the trustee is provided a written cer-  
18       tification by the grand jury seeking the information  
19       that the grand jury has complied with the applicable  
20       access provisions of section 213;

21               (2) an administrative subpoena or a judicial  
22       subpoena or warrant, and the trustee is provided a  
23       written certification by the person seeking the infor-  
24       mation that the person has complied with the appli-  
25       cable access provisions of section 213 or 214; or

1           (3) an administrative subpoena or a judicial  
2 subpoena or warrant, and the disclosure otherwise  
3 meets the conditions of section 205, 207, 208, 209,  
4 or 211.

5           (b) RESTRICTIONS ON ADDITIONAL DISCLOSURE.—  
6 Protected health information about an individual that is  
7 received under—

8           (1) subsection (a) may not be disclosed for, or  
9 used in, any administrative, civil, or criminal action  
10 or investigation against the individual, except in an  
11 action or investigation arising out of and directly re-  
12 lated to the inquiry for which the information was  
13 obtained;

14           (2) subsection (a)(2) may not be otherwise dis-  
15 closed by the recipient unless the disclosure is nec-  
16 essary to fulfill the purpose for which the informa-  
17 tion was obtained; and

18           (3) subsection (a)(3) may not be disclosed by  
19 the recipient unless the recipient complies with the  
20 conditions and restrictions on disclosure with which  
21 the recipient would have been required to comply if  
22 the disclosure had been made under section 205,  
23 207, 208, 209, or 211.

1 **SEC. 213. ACCESS PROCEDURES FOR LAW ENFORCEMENT**

2 **SUBPOENAS AND WARRANTS.**

3 (a) **PROBABLE CAUSE REQUIREMENT.**—A govern-  
4 ment authority may not obtain protected health informa-  
5 tion about a person under section 212(a) (1) or (2) for  
6 use in a law enforcement inquiry unless there is probable  
7 cause to believe that the information is relevant to a legiti-  
8 mate law enforcement inquiry being conducted by the gov-  
9 ernment authority.

10 (b) **WARRANTS.**—A government authority that ob-  
11 tains protected health information about an individual  
12 under circumstances described in subsection (a) and pur-  
13 suant to a warrant shall, not later than 30 days after the  
14 date the warrant was executed, serve the individual with,  
15 or mail to the last known address of the individual, a no-  
16 tice that protected health information about the individual  
17 was so obtained.

18 (c) **SUBPOENAS.**—Except as provided in subsection  
19 (d), a government authority may not obtain protected  
20 health information about an individual under cir-  
21 cumstances described in subsection (a) and pursuant to  
22 a subpoena unless a copy of the subpoena has been served  
23 on the individual on or before the date of return of the  
24 subpoena, together with a notice of the individual's right  
25 to challenge the subpoena in accordance with section 214,  
26 and—

1           (1) 30 days have passed from the date of serv-  
2           ice on the individual and within that time period the  
3           individual has not initiated a challenge in accordance  
4           with section 214; or

5           (2) disclosure is ordered by a court after chal-  
6           lenge under section 214.

7           (d) APPLICATION FOR DELAY.—

8           (1) IN GENERAL.—A government authority may  
9           apply ex parte and under seal to an appropriate  
10          court to delay (for an initial period of not longer  
11          than 90 days) serving a copy of a subpoena or notice  
12          required under subsection (b) or (c) with respect to  
13          a law enforcement inquiry. The government author-  
14          ity may apply to the court for extensions of the  
15          delay.

16          (2) REASONS FOR DELAY.—An application for  
17          a delay, or extension of a delay, under this sub-  
18          section shall state, with reasonable specificity, the  
19          reasons why the delay or extension is being sought.

20          (3) EX PARTE ORDER.—The court shall enter  
21          an ex parte order delaying, or extending the delay  
22          of, notice and an order prohibiting the disclosure of  
23          the request for or disclosure of the protected health  
24          information and an order requiring the disclosure of

1 the protected health information if the court finds  
2 that—

3 (A) the inquiry being conducted is within  
4 the lawful jurisdiction of the government au-  
5 thority seeking the protected health informa-  
6 tion;

7 (B) there is probable cause to believe that  
8 the protected health information being sought is  
9 relevant to a legitimate law enforcement in-  
10 quiry;

11 (C) the government authority's need for  
12 the information outweighs the privacy interest  
13 of the individual who is the subject of the infor-  
14 mation; and

15 (D) there is reasonable ground to believe  
16 that receipt of notice by the individual will re-  
17 sult in—

18 (i) endangering the life or physical  
19 safety of any individual;

20 (ii) flight from prosecution;

21 (iii) destruction of or tampering with  
22 evidence or the information being sought;

23 or

24 (iv) intimidation of potential wit-  
25 nesses.

1 **SEC. 214. CHALLENGE PROCEDURES FOR LAW ENFORCE-**  
2 **MENT SUBPOENAS.**

3 (a) MOTION TO QUASH SUBPOENA.—Within 30 days  
4 after the date of service of a subpoena of a government  
5 authority seeking protected health information about an  
6 individual under section 212(a) (1) or (2), or notice that  
7 protected health information has been obtained by a gov-  
8 ernment authority, the individual may file a motion to  
9 quash the subpoena—

10 (1) in the case of a State judicial subpoena, in  
11 the court which issued the subpoena;

12 (2) in the case of a subpoena issued under the  
13 authority of a State that is not a State judicial sub-  
14 poena, in a court of competent jurisdiction;

15 (3) in the case of a subpoena issued under the  
16 authority of a Federal court, in the United States  
17 district court for the district in which the movant re-  
18 sides or in which the subpoena was issued; or

19 (4) in the case of any other subpoena issued  
20 under the authority of the United States, in the  
21 United States district court for the district in which  
22 the movant resides or in which the subpoena was is-  
23 sued.

24 (b) COPY.—A copy of the motion shall be served by  
25 the movant upon the government authority by registered  
26 or certified mail.

1           (c) PROCEEDINGS.—The government authority may  
2 file with the court such papers, including affidavits and  
3 other sworn documents, as sustain the validity of the sub-  
4 poena. The movant may file with the court reply papers  
5 in response to the authority’s filing. The court, upon the  
6 request of the movant or the government authority or  
7 both, may proceed in camera. The court may conduct such  
8 proceedings as it deems appropriate to rule on the motion,  
9 but shall endeavor to expedite its determination.

10          (d) STANDARD FOR DECISION.—A court may deny  
11 a motion under subsection (a) if it finds there is probable  
12 cause to believe the protected health information being  
13 sought is relevant to a legitimate law enforcement inquiry  
14 being conducted by the government authority, unless the  
15 court finds the movant’s privacy interest outweighs the  
16 government authority’s need for the information. The  
17 movant shall have the burden of demonstrating that the  
18 individual’s privacy interest outweighs the need estab-  
19 lished by the government authority for the information.

20          (e) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
21 PRIVACY INTEREST.—In reaching its determination, the  
22 court shall consider—

23               (1) the particular purpose for which the infor-  
24 mation was collected;

1           (2) the degree to which disclosure of the infor-  
2           mation will embarrass, injure, or invade the privacy  
3           of the movant;

4           (3) the effect of the disclosure on the movant's  
5           future health care;

6           (4) the importance of the inquiry being con-  
7           ducted by the government authority, and the impor-  
8           tance of the information to that inquiry; and

9           (5) any other factor deemed relevant by the  
10          court.

11          (f) ATTORNEY'S FEES.—In the case of a motion  
12          brought under subsection (a) in which the movant sub-  
13          stantially prevails, the court may assess against the gov-  
14          ernment authority a reasonable attorney's fee and other  
15          litigation costs (including expert fees) reasonably incurred.

16          (g) NO INTERLOCUTORY APPEAL.—A ruling denying  
17          a motion to quash under this section shall not be deemed  
18          to be a final order, and no interlocutory appeal may be  
19          taken therefrom by the movant. An appeal of such a ruling  
20          may be taken by the movant within such period of time  
21          as is provided by law as part of any appeal from a final  
22          order in any legal proceeding initiated against the movant  
23          arising out of or based upon the protected health informa-  
24          tion disclosed.

1 **SEC. 215. ACCESS AND CHALLENGE PROCEDURES FOR SUB-**  
2 **POENAS OTHER THAN LAW ENFORCEMENT**  
3 **SUBPOENAS.**

4 (a) IN GENERAL.—A private party may not obtain  
5 protected health information from a health care provider,  
6 health benefit plan, employer, or person that receives pro-  
7 tected health information under section 208 pursuant to  
8 a subpoena unless—

9 (1) a copy of the subpoena together with a no-  
10 tice of the individual’s right to challenge the sub-  
11 poena by filing a motion to quash under subsection  
12 (b), has been served upon the individual identified  
13 by the information on or before the date on which  
14 the subpoena was served; and

15 (2)(A) 30 days have passed since the date of  
16 service, and within that time period the individual  
17 has not filed a motion under subsection (b); or

18 (B) disclosure is ordered by a court under that  
19 subsection.

20 (b) MOTION TO QUASH.—Within 30 days after serv-  
21 ice of a subpoena seeking protected health information  
22 under subsection (a), the individual identified by the infor-  
23 mation may file in any court of competent jurisdiction a  
24 motion to quash the subpoena, with a copy served on the  
25 person seeking the information. The individual may op-  
26 pose or seek to limit the subpoena on any ground that

1 would be available if the individual were in sole possession  
2 of the information, including privacy and relevance.

3 (c) STANDARD FOR DECISION.—The court shall  
4 grant a motion under subsection (b) unless the respondent  
5 demonstrates that—

6 (1) there is reasonable ground to believe the in-  
7 formation is relevant to a lawsuit or other judicial  
8 or administrative proceeding; and

9 (2) the need of the respondent for the informa-  
10 tion outweighs the privacy interest of the movant.

11 (d) SPECIFIC CONSIDERATIONS WITH RESPECT TO  
12 PRIVACY INTEREST.—In determining under subsection (c)  
13 whether the need of the respondent for the information  
14 outweighs the privacy of the movant, the court shall con-  
15 sider—

16 (1) the particular purpose for which the infor-  
17 mation was collected;

18 (2) the degree to which disclosure of the infor-  
19 mation would embarrass, injure, or invade the pri-  
20 vacy of the movant;

21 (3) the effect of the disclosure on the movant's  
22 future health care;

23 (4) the importance of the information to the  
24 lawsuit or proceeding; and

25 (5) any other relevant factor.

1 (e) ATTORNEY'S FEES.—In the case of a motion  
2 brought under subsection (b) in which the movant has  
3 substantially prevailed, the court may assess against the  
4 respondent a reasonable attorney's fee and other litigation  
5 costs and expenses (including expert's fees) reasonably in-  
6 curred.

7 **SEC. 216. SECURITY.**

8 (a) IN GENERAL.—A health information trustee shall  
9 maintain reasonable and appropriate administrative, tech-  
10 nical, and physical safeguards—

11 (1) to ensure the integrity and confidentiality of  
12 protected health information created or received by  
13 the trustee; and

14 (2) to protect against any anticipated threats or  
15 hazards to the security or integrity of such informa-  
16 tion.

17 (b) SPECIFIC SECURITY MEASURES.—The security  
18 measures adopted by a health information trustee shall in-  
19 clude the following:

20 (1) officers, employees, and agents of the trust-  
21 ee who have access to protected health information  
22 created by the trustee shall be regularly trained in  
23 the requirements governing such information;

24 (2) complete, accurate, and readily available  
25 records shall be maintained, if the maintenance of

1 such records is practicable, taking into account the  
2 technical capabilities of the system used to maintain  
3 protected health information and the costs of such  
4 maintenance; and

5 (3) appropriate signs and warnings shall be  
6 posted to advise of the need to secure protected  
7 health information.

8 (c) REGULATIONS.—The Secretary, in consultation  
9 with the Attorney General, shall promulgate regulations  
10 regarding security measures for protected health informa-  
11 tion.

12 **SEC. 217. INSPECTION OF PROTECTED HEALTH INFORMA-**  
13 **TION.**

14 (a) INSPECTION OF PROTECTED HEALTH INFORMA-  
15 TION.—

16 (1) IN GENERAL.—Except as provided in para-  
17 graph (2), a health care provider or health benefit  
18 plan—

19 (A) shall permit an individual who is the  
20 subject of protected health information to in-  
21 spect any such information that the provider or  
22 plan maintains;

23 (B) shall permit the individual to have a  
24 copy of the information;

1 (C) shall permit a person who has been  
2 designated in writing by the individual who is  
3 the subject of the information to inspect, or to  
4 have a copy of, the information on behalf of the  
5 individual or to accompany the individual dur-  
6 ing the inspection; and

7 (D) may offer to explain or interpret infor-  
8 mation that is inspected or copied under this  
9 subsection.

10 (2) EXCEPTIONS.—A health care provider or  
11 health benefit plan is not required by this section to  
12 permit inspection or copying of protected health in-  
13 formation if any of the following conditions apply:

14 (A) MENTAL HEALTH TREATMENT  
15 NOTES.—The information consists of psy-  
16 chiatric, psychological, or mental health treat-  
17 ment notes, and the provider or plan deter-  
18 mines, based on reasonable medical judgment,  
19 that inspection or copying of the notes would  
20 cause sufficient harm to the individual who is  
21 the subject of the notes so as to outweigh the  
22 desirability of permitting access, and the pro-  
23 vider or plan has not disclosed the notes to any  
24 person not directly engaged in treating the indi-

1 individual, except with the authorization of the in-  
2 dividual or under compulsion of law.

3 (B) INFORMATION ABOUT OTHERS.—The  
4 information relates to an individual other than  
5 the individual seeking to inspect or have a copy  
6 of the information and the provider or plan de-  
7 termines, based on reasonable medical judg-  
8 ment, that inspection or copying of the informa-  
9 tion would cause sufficient harm to 1 or both  
10 of the individuals so as to outweigh the desir-  
11 ability of permitting access.

12 (C) ENDANGERMENT TO LIFE OR SAFE-  
13 TY.—The provider or plan determines that dis-  
14 closure of the information could reasonably be  
15 expected to endanger the life or physical safety  
16 of any individual.

17 (D) CONFIDENTIAL SOURCE.—The infor-  
18 mation identifies or could reasonably lead to the  
19 identification of a person (other than a health  
20 care provider) who provided information under  
21 a promise of confidentiality to a health care  
22 provider concerning the individual who is the  
23 subject of the information.

24 (E) ADMINISTRATIVE PURPOSES.—The in-  
25 formation—

1 (i) is used by the provider or plan  
2 solely for administrative purposes and not  
3 in the provision of health care to the indi-  
4 vidual who is the subject of the informa-  
5 tion; and

6 (ii) has not been disclosed by the pro-  
7 vider or plan to any other person.

8 (3) INSPECTION AND COPYING OF SEGREGABLE  
9 PORTION.—A health care provider or health benefit  
10 plan shall permit inspection and copying under para-  
11 graph (1) of any reasonably segregable portion of a  
12 record after deletion of any portion that is exempt  
13 under paragraph (2).

14 (4) CONDITIONS.—A health care provider or  
15 health benefit plan may—

16 (A) require a written request for the in-  
17 spection and copying of protected health infor-  
18 mation under this subsection; and

19 (B) charge a reasonable fee (not greater  
20 than the actual cost) for—

21 (i) permitting inspection of informa-  
22 tion under this subsection; and

23 (ii) providing a copy of protected  
24 health information under this subsection.

1           (5) STATEMENT OF REASONS FOR DENIAL.—If  
2           a health care provider or health benefit plan denies  
3           a request for inspection or copying under this sub-  
4           section, the provider or plan shall provide the indi-  
5           vidual who made the request (or the individual’s des-  
6           ignated representative) with a written statement of  
7           the reasons for the denial.

8           (6) DEADLINE.—A health care provider or  
9           health benefit plan shall comply with or deny a re-  
10          quest for inspection or copying of protected health  
11          information under this subsection within the 30-day  
12          period beginning on the date on which the provider  
13          or plan receives the request.

14 **SEC. 218. AMENDMENT OF PROTECTED HEALTH INFORMA-**  
15 **TION.**

16          (a) IN GENERAL.—A health care provider or health  
17          benefit plan that is required to comply with this subsection  
18          shall, within the 45-day period beginning on the date on  
19          which the provider or plan receives from an individual a  
20          written request that the provider or plan correct or amend  
21          the information—

22                  (1) make the correction or amendment re-  
23                  quested;

24                  (2) inform the individual of the correction or  
25                  amendment that has been made;

1           (3) inform any regional data center to which  
2           the uncorrected or unamended portion of the infor-  
3           mation was previously disclosed, of the correction or  
4           amendment;

5           (4) inform any person who is identified by the  
6           individual, who is not an officer, employee or agent,  
7           of the provider or plan, and to whom the uncor-  
8           rected or unamended portion of the information was  
9           previously disclosed, of the correction or amendment  
10          that has been made.

11          (b) REFUSAL TO CORRECT.—If the provider or plan  
12          refuses to make the corrections, the provider or plan shall  
13          inform the individual of—

14               (1) the reasons for the refusal of the provider  
15               or plan to make the correction or amendment;

16               (2) any procedures for further review of the re-  
17               fusal; and

18               (3) the individual’s right to file with the pro-  
19               vider or plan a concise statement setting forth the  
20               requested correction or amendment and the individ-  
21               ual’s reasons for disagreeing with the refusal of the  
22               provider or plan.

23          (c) BASES FOR REQUEST TO CORRECT OR AMEND.—  
24          An individual may request correction or amendment of  
25          protected health information about the individual under

1 paragraph (d) if the information is not timely, accurate,  
2 relevant to the system of records, or complete.

3 (d) STATEMENT OF DISAGREEMENT.—After an indi-  
4 vidual has filed a statement of disagreement under para-  
5 graph (b)(3), the provider or plan, in any subsequent dis-  
6 closure of the disputed portion of the information—

7 (1) shall include a copy of the individual's  
8 statement; and

9 (2) may include a concise statement of the rea-  
10 sons of the provider or plan for not making the re-  
11 quested correction or amendment.

12 (e) RULE OF CONSTRUCTION.—This subsection shall  
13 not be construed to require a health care provider or  
14 health benefit plan to conduct a formal, informal, or other  
15 hearing or proceeding concerning a request for a correc-  
16 tion or amendment to protected health information the  
17 provider or plan maintains.

18 (f) CORRECTION.—For purposes of paragraph (2), a  
19 correction is deemed to have been made to protected  
20 health information when information that is not timely,  
21 accurate, relevant to the system of records, or complete  
22 is clearly marked as incorrect or when supplementary cor-  
23 rect information is made part of the information.

24 (g) NOTICE OF INFORMATION PRACTICES.—

1           (1) PREPARATION OF WRITTEN NOTICE.—A  
2 health care provider or health benefit plan shall pre-  
3 pare a written notice of information practices de-  
4 scribing the following:

5           (A) PERSONAL RIGHTS OF AN INDIVID-  
6 UAL.—The rights under this section of an indi-  
7 vidual who is the subject of protected health in-  
8 formation, including the right to inspect and  
9 copy such information and the right to seek  
10 amendments to such information, and the pro-  
11 cedures for authorizing disclosures of protected  
12 health information and for revoking such au-  
13 thorizations.

14           (B) PROCEDURES OF PROVIDER OR  
15 PLAN.—The procedures established by the pro-  
16 vider or plan for the exercise of the rights of in-  
17 dividuals about whom protected health informa-  
18 tion is maintained.

19           (C) AUTHORIZED DISCLOSURES.—The dis-  
20 closures of protected health information that  
21 are authorized.

22           (2) DISSEMINATION OF NOTICE.—A health care  
23 provider or health benefit plan—

1 (A) shall, upon request, provide any indi-  
2 vidual with a copy of the notice of information  
3 practices described in paragraph (1); and

4 (B) shall make reasonable efforts to inform  
5 individuals in a clear and conspicuous manner  
6 of the existence and availability of the notice.

7 (3) MODEL NOTICE.—Not later than July 1,  
8 1996, the Secretary, after consultation with the At-  
9 torney General and after notice and opportunity for  
10 public comment, shall develop and disseminate a  
11 model notice of information practices for use by  
12 health care providers and health benefit plans under  
13 this section.

14 **SEC. 219. ACCOUNTING FOR DISCLOSURES.**

15 (a) IN GENERAL.—A health care provider or health  
16 benefit plan that is required to comply with this subsection  
17 shall create and maintain, with respect to any protected  
18 health information disclosed, a record of—

19 (1) the date and purpose of the disclosure;

20 (2) the name of the person to whom the disclo-  
21 sure was made;

22 (3) the address of the person to whom the dis-  
23 closure was made or the location to which the disclo-  
24 sure was made; and



1 been declared to be incompetent by a court of competent  
2 jurisdiction, the rights of the individual under this section  
3 shall be exercised and discharged in the best interests of  
4 the individual through an authorized legal representative.

5 (b) NO COURT DECLARATION.—Except as provided  
6 in section 222, if a health care provider determines that  
7 an individual, who has not been declared to be incom-  
8 petent by a court of competent jurisdiction, suffers from  
9 a medical condition that prevents the individual from act-  
10 ing knowingly or effectively on the individual's own behalf,  
11 the right of the individual to authorize disclosure may be  
12 exercised and discharged in the best interest of the individ-  
13 ual by the individual's next of kin.

14 **SEC. 222. RIGHTS OF MINORS.**

15 (a) INDIVIDUALS WHO ARE 18 OR LEGALLY CAPA-  
16 BLE.—In the case of an individual—

17 (1) who is 18 years of age or older, all rights  
18 of the individual shall be exercised by the individual;

19 or

20 (2) who, acting alone, has the legal right, as de-  
21 termined by State law, to apply for and obtain a  
22 type of medical examination, care, or treatment and  
23 who has sought such examination, care, or treat-  
24 ment, the individual shall exercise all rights of an in-  
25 dividual under this title with respect to protected

1 health information relating to such examination,  
2 care, or treatment.

3 (b) INDIVIDUALS UNDER 18.—Except as provided in  
4 subsection (a)(2), in the case of an individual who is—

5 (1) under 14 years of age, all the individual's  
6 rights under this title shall be exercised through the  
7 parent or legal guardian of the individual; or

8 (2) 14, 15, 16, or 17 years of age, the rights  
9 of inspection and amendment, and the right to au-  
10 thorize disclosure of protected health information of  
11 the individual may be exercised either by the individ-  
12 ual or by the parent or legal guardian of the individ-  
13 ual.

14 **SEC. 223. NO LIABILITY FOR PERMISSIBLE DISCLOSURES.**

15 A health information trustee who makes a disclosure  
16 of protected health information about an individual that  
17 is permitted by this title shall not be liable to the individ-  
18 ual for the disclosure under common law.

19 **SEC. 224. NO LIABILITY FOR INSTITUTIONAL REVIEW**  
20 **BOARD DETERMINATIONS.**

21 If the members of an institutional review board make  
22 a determination in good faith that—

23 (1) a health research project is of sufficient im-  
24 portance to outweigh the intrusion into the privacy  
25 of an individual; and

1           (2) the effectiveness of the project requires use  
2           of protected health information,  
3 the members, the board, and the parent institution of the  
4 board shall not be liable to the individual as a result of  
5 the determination.

6 **SEC. 225. GOOD FAITH RELIANCE ON CERTIFICATION.**

7           A health information trustee who relies in good faith  
8 on a certification by a government authority or other per-  
9 son and discloses protected health information about an  
10 individual in accordance with this title shall not be liable  
11 to the individual for such disclosure.

12 **SEC. 226. CIVIL PENALTY.**

13           (a) VIOLATION.—Any health information trustee who  
14 the Secretary determines has substantially failed to com-  
15 ply with this title shall be subject, in addition to any other  
16 penalties that may be prescribed by law, to a civil penalty  
17 of not more than \$10,000 for each such violation.

18           (b) PROCEDURES FOR IMPOSITION OF PENALTIES.—  
19 Section 1128A of the Social Security Act (42 U.S.C.  
20 1320a-7a), other than subsections (a) and (b) and the  
21 second sentence of subsection (f) of that section, shall  
22 apply to the imposition of a civil monetary penalty under  
23 this section in the same manner as such provisions apply  
24 with respect to the imposition of a penalty under section  
25 1128A of that Act.

1 **SEC. 227. CIVIL ACTION.**

2 (a) IN GENERAL.—An individual who is aggrieved by  
3 conduct in violation of this title may bring a civil action  
4 to recover—

5 (1) the greater of actual damages or liquidated  
6 damages of \$5,000;

7 (2) punitive damages;

8 (3) a reasonable attorney’s fee and expenses of  
9 litigation;

10 (4) costs of litigation; and

11 (5) such preliminary and equitable relief as the  
12 court determines to be appropriate.

13 (b) LIMITATION.—No action may be commenced  
14 under this section more than 3 years after the date on  
15 which the violation was or should reasonably have been  
16 discovered.

17 **SEC. 228. RELATIONSHIP TO OTHER LAWS.**

18 (a) STATE LAW.—Except as provided in subsections  
19 (b), (c), and (d), this title preempts any State law to the  
20 extent that such law is inconsistent with this title.

21 (b) LAWS RELATING TO PUBLIC HEALTH.—Nothing  
22 in this title is intended to preempt or operate to the exclu-  
23 sion of any State public health law that prevents or regu-  
24 lates disclosure of protected health information otherwise  
25 allowed under this Act.

1 (c) PRIVILEGES.—Nothing in this title is intended to  
 2 preempt or modify State common or statutory law to the  
 3 extent such law concerns a privilege of a witness or person  
 4 in a court of the State. This title does not supersede or  
 5 modify Federal common or statutory law to the extent  
 6 such law concerns a privilege of a witness or person in  
 7 a court of the United States.

8 (d) CERTAIN DUTIES UNDER STATE OR FEDERAL  
 9 LAW.—This title shall not be construed to preempt, super-  
 10 sede, or modify the operation of—

11 (1) any law that provides for the reporting of  
 12 vital statistics such as birth or death information;

13 (2) any law requiring the reporting of abuse or  
 14 neglect information about any individual;

15 (3) subpart II of part E of title XXVI of the  
 16 Public Health Service Act (relating to notifications  
 17 of emergency response employees of possible expo-  
 18 sure to infectious diseases); or

19 (4) any Federal law that prevents or regulates  
 20 disclosure of protected health information.

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