

104TH CONGRESS  
2D SESSION

# S. 2005

To prohibit the restriction of certain types of medical communications between a health care provider and a patient.

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## IN THE SENATE OF THE UNITED STATES

JULY 31, 1996

Mr. WYDEN introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

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## A BILL

To prohibit the restriction of certain types of medical communications between a health care provider and a patient.

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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Patient Communications Protection Act of 1996”.

6 (b) FINDINGS.—Congress finds the following:

7 (1) Patients need access to all relevant informa-  
8 tion to make appropriate decisions, with their physi-  
9 cians, about their health care.

1           (2) Restrictions on the ability of physicians to  
 2 provide full disclosure of all relevant information to  
 3 patients making health care decisions violate the  
 4 principles of informed consent and practitioner ethi-  
 5 cal standards.

6           (3) The offering and operation of health plans  
 7 affect commerce among the States. Health care pro-  
 8 viders located in one State serve patients who reside  
 9 in other States as well as that State. In order to  
 10 provide for uniform treatment of health care provid-  
 11 ers and patients among the States, it is necessary to  
 12 cover health plans operating in one State as well as  
 13 those operating among the several States.

14 **SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN**  
 15 **MEDICAL COMMUNICATIONS.**

16 (a) IN GENERAL.—

17 (1) PROHIBITION OF CERTAIN PROVISIONS.—

18 Subject to paragraph (2), an entity offering a health  
 19 plan (as defined in subsection (d)(2)) may not in-  
 20 clude any provision that prohibits or restricts any  
 21 medical communication (as defined in subsection

22 (b)) as part of—

23 (A) a written contract or agreement with a  
 24 health care provider,

1 (B) a written statement to such a provider,

2 or

3 (C) an oral communication to such a pro-

4 vider.

5 (2) CONSTRUCTION.—Nothing in this section  
6 shall be construed as preventing an entity from exer-  
7 cising mutually agreed upon terms and conditions  
8 not inconsistent with paragraph (1), including terms  
9 or conditions requiring a physician to participate in,  
10 and cooperate with, all programs, policies, and pro-  
11 cedures developed or operated by the person, cor-  
12 poration, partnership, association, or other organiza-  
13 tion to ensure, review, or improve the quality of  
14 health care.

15 (3) NULLIFICATION.—Any provision described  
16 in paragraph (1) is null and void.

17 (b) MEDICAL COMMUNICATION DEFINED.—In this  
18 section, the term “medical communication” means a com-  
19 munication made by a health care provider with a patient  
20 of the provider (or the guardian or legal representative  
21 of such patient) with respect to the patient’s physical or  
22 mental condition or treatment options.

23 (c) ENFORCEMENT THROUGH IMPOSITION OF CIVIL  
24 MONEY PENALTY.—

1           (1) IN GENERAL.—Any entity that violates  
2 paragraph (1) of subsection (a) shall be subject to  
3 a civil money penalty of up to \$15,000 for each vio-  
4 lation. No such penalty shall be imposed solely on  
5 the basis of an oral communication unless the com-  
6 munication is part of a pattern or practice of such  
7 communications and the violation is demonstrated  
8 by a preponderance of the evidence.

9           (2) PROCEDURES.—The provisions of sub-  
10 sections (c) through (l) of section 1128A of the So-  
11 cial Security Act (42 U.S.C. 1320a–7a) shall apply  
12 to civil money penalties under paragraph (1) in the  
13 same manner as they apply to a penalty or proceed-  
14 ing under section 1128A(a) of such Act.

15 (d) DEFINITIONS.—For purposes of this section:

16           (1) HEALTH CARE PROVIDER.—The term  
17 “health care provider” means anyone licensed under  
18 State law to provide health care services, including  
19 a practitioner such as a nurse anesthetist or chiro-  
20 practor who is so licensed.

21           (2) HEALTH PLAN.—The term “health plan”  
22 means any public or private health plan or arrange-  
23 ment (including an employee welfare benefit plan)  
24 which provides, or pays the cost of, health benefits,  
25 and includes an organization of health care providers

1 that furnishes health services under a contract or  
2 agreement with such a plan.

3 (3) COVERAGE OF THIRD PARTY ADMINISTRA-  
4 TORS.—In the case of a health plan that is an em-  
5 ployee welfare benefit plan (as defined in section  
6 3(1) of the Employee Retirement Income Security  
7 Act of 1974), any third party administrator or other  
8 person with responsibility for contracts with health  
9 care providers under the plan shall be considered,  
10 for purposes of this section, to be an entity offering  
11 such health plan.

12 (e) NON-PREEMPTION OF STATE LAW.—A State may  
13 establish or enforce requirements with respect to the sub-  
14 ject matter of this section, but only if such requirements  
15 are consistent with the Act and are more protective of  
16 medical communications than the requirements estab-  
17 lished under this section.

18 (g) EFFECTIVE DATE.—Subsection (a) shall take ef-  
19 fect 180 days after the date of the enactment of this Act  
20 and shall apply to medical communications made on or  
21 after such date.

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