

105TH CONGRESS  
1ST SESSION

# H. R. 586

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

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 5, 1997

Mr. GANSKE (for himself, Mr. MARKEY, Mr. ABERCROMBIE, Mr. ACKERMAN, Mr. BALDACCI, Mr. BALLENGER, Mr. BARCIA, Mr. BARRETT of Wisconsin, Mr. BENTSEN, Mr. BOEHLERT, Mr. BORSKI, Mr. BOUCHER, Mr. BROWN of Ohio, Mr. BURTON of Indiana, Mr. CANADY of Florida, Mr. CHABOT, Mr. CHAMBLISS, Mrs. CLAYTON, Mr. CLEMENT, Mr. COBURN, Mr. CONDIT, Mr. COOKSEY, Mr. CRAPO, Mr. CUMMINGS, Mr. DAVIS of Virginia, Mr. DAVIS of Illinois, Mr. DEFazio, Mr. DELAHUNT, Ms. DELAURO, Mr. DELLUMS, Mr. DOOLEY of California, Mr. EHLERS, Ms. ESHOO, Mr. EVANS, Mr. FALEOMAVAEGA, Mr. FATTAH, Mr. FILNER, Mr. FOGLIETTA, Mr. FOX of Pennsylvania, Mr. FRANK of Massachusetts, Mr. FROST, Ms. Furse, Mr. GEJDENSON, Mr. GILLMOR, Mr. GILMAN, Mr. GORDON, Mr. GRAHAM, Mr. GREEN, Mr. GREENWOOD, Mr. HANSEN, Mr. HASTINGS of Florida, Mr. HEFLEY, Mr. HINCHEY, Mr. HOSTETTLER, Mr. HOUGHTON, Ms. EDDIE BERNICE JOHNSON of Texas, Mrs. KELLY, Mr. KENNEDY of Massachusetts, Mr. KILDEE, Ms. KILPATRICK, Mr. KIND, Mr. KING, Mr. KLECZKA, Mr. KLINK, Mr. LaFALCE, Mr. LATHAM, Mr. LEACH, Mr. LEWIS of Georgia, Mr. LATOURETTE, Mr. LOBIONDO, Ms. LOFGREN, Mrs. LOWEY, Mr. McDERMOTT, Ms. MCKINNEY, Mrs. MALONEY of New York, Mr. MARTINEZ, Mr. MEEHAN, Mrs. MEEK of Florida, Mr. MENENDEZ, Mr. MILLER of California, Mrs. MINK of Hawaii, Mr. MORAN of Virginia, Mrs. MYRICK, Mr. NADLER, Mr. NETHERCUTT, Mr. NEAL of Massachusetts, Mr. NEY, Mr. NORWOOD, Mr. OLVER, Mr. OWENS, Mr. OXLEY, Mr. PASTOR, Mr. PAYNE, Ms. PELOSI, Mr. PICKETT, Mr. PORTER, Mr. POSHARD, Ms. PRYCE of Ohio, Mr. RAHALL, Mrs. ROUKEMA, Mr. RUSH, Mr. SANDERS, Mr. SAWYER, Mr. SAXTON, Mr. SCARBOROUGH, Mr. SERRANO, Mr. SKAGGS, Mr. SKEEN, Ms. SLAUGHTER, Mr. SMITH of New Jersey, Mr. SOLOMON, Mr. STARK, Mr. STOKES, Mr. TAUZIN, Mr. THORNBERRY, Mrs. THURMAN, Mr. TRAFICANT, Mr. WELDON of Florida, Mr. WALSH, Mr. WAXMAN, Mr. WEYGAND, Mr. WHITFIELD, Mr. WISE, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on Ways and Means, and Education and the Workforce, for a period to be subsequently determined by

the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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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 Right to Know Act”.

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

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

10 (2) Open medical communications between  
11 health care providers and their patients is a key to  
12 prevention and early diagnosis and treatment, as  
13 well as to informed consent and quality, cost-effec-  
14 tive care.

15 (3) Open medical communications are in the  
16 best interests of patients.

17 (4) Open medical communications must meet  
18 applicable legal and ethical standards of care.

1           (5) It is critical that health care providers con-  
2           tinue to exercise their best medical, ethical, and  
3           moral judgment in advising patients without inter-  
4           ference from health plans.

5           (6) The offering and operation of health plans  
6           affect commerce among the States.

7           (c) PURPOSE.—It is the purpose of this Act to estab-  
8           lish a Federal standard that protects medical communica-  
9           tions between health care providers and patients.

10 **SEC. 2. PROHIBITION OF INTERFERENCE WITH CERTAIN**  
11 **MEDICAL COMMUNICATIONS.**

12           (a) PROHIBITION.—

13           (1) GENERAL RULE.—The provisions of any  
14           contract or agreement, or the operation of any con-  
15           tract or agreement, between an entity operating a  
16           health plan (including any partnership, association,  
17           or other organization that enters into or administers  
18           such a contract or agreement) and a health care  
19           provider (or group of health care providers) shall not  
20           prohibit or restrict the provider from engaging in  
21           medical communications with his or her patient.

22           (2) NULLIFICATION.—Any contract provision or  
23           agreement described in paragraph (1) shall be null  
24           and void.

1           (3) PROHIBITION ON PROVISIONS.—Effective on  
2           the date described in section 5, a contract or agree-  
3           ment described in paragraph (1) shall not include a  
4           provision that violates paragraph (1).

5           (b) RULES OF CONSTRUCTION.—Nothing in this Act  
6           shall be construed—

7           (1) to prohibit the enforcement, as part of a  
8           contract or agreement to which a health care pro-  
9           vider is a party, of any mutually agreed upon terms  
10          and conditions, including terms and conditions re-  
11          quiring a health care provider to participate in, and  
12          cooperate with, all programs, policies, and proce-  
13          dures developed or operated by a health plan to as-  
14          sure, review, or improve the quality and effective uti-  
15          lization of health care services (if such utilization is  
16          according to guidelines or protocols that are based  
17          on clinical or scientific evidence and the professional  
18          judgment of the provider) but only if the guidelines  
19          or protocols under such utilization do not prohibit or  
20          restrict medical communications between providers  
21          and their patients; or

22          (2) to permit a health care provider to mis-  
23          represent the scope of benefits covered under a

1 health plan or to otherwise require the plan to reim-  
2 burse providers for benefits not covered under the  
3 plan

4 (c) ENFORCEMENT.—

5 (1) STATE AUTHORITY.—Except as otherwise  
6 provided in this subsection, each State shall enforce  
7 the provisions of this Act with respect to health in-  
8 surance issuers that issue, sell, renew, or offer  
9 health plans in the State.

10 (2) ENFORCEMENT BY SECRETARY.—

11 (A) IN GENERAL.—Effective on January 1,  
12 1998, if the Secretary, after consultation with  
13 the chief executive officer of a State and the in-  
14 surance commissioner or chief insurance regu-  
15 latory official of the State, determines that the  
16 State has failed to substantially enforce the re-  
17 quirements of this Act with respect to health in-  
18 surance issuers in the State, the Secretary shall  
19 enforce the requirements of this Act with re-  
20 spect to such State.

21 (B) ENFORCEMENT THROUGH IMPOSITION  
22 OF CIVIL MONEY PENALTY.—

23 (i) IN GENERAL.—With respect to a  
24 State in which the Secretary is enforcing

1           the requirements of this Act, an entity op-  
2           erating a health plan in that State that  
3           violates subsection (a) shall be subject to a  
4           civil money penalty of up to \$25,000 for  
5           each such violation.

6           (ii) PROCEDURES.—For purposes of  
7           imposing a civil money penalty under  
8           clause (i), the provisions of subparagraphs  
9           (C) through (G) of section 2722(b)(2) of  
10          the Health Insurance Portability and Ac-  
11          countability Act of 1996 (42 U.S.C.  
12          300gg–22(b)(2)) shall apply except that  
13          the provisions of clause (i) of subpara-  
14          graph (C) of such section shall not apply.

15          (3) SELF-INSURED PLANS.—Effective on Janu-  
16          ary 1, 1998, the Secretary of Labor shall enforce the  
17          requirements of this section in the case of a health  
18          plan not subject to State regulation by reason of sec-  
19          tion 514(b) of the Employee Retirement Income Se-  
20          curity Act of 1974 (29 U.S.C. 1144(b)).

21          (4) RULE OF CONSTRUCTION.—Nothing in this  
22          Act shall be construed to affect or modify the provi-  
23          sions of section 514 of the Employee Retirement In-  
24          come Security Act of 1974 (29 U.S.C. 1144).

1 (d) NO PREEMPTION OF MORE PROTECTIVE  
2 LAWS.—A State may establish or enforce requirements  
3 with respect to the protection of medical communications,  
4 but only if such requirements are equal to or more protec-  
5 tive of such communications than the requirements estab-  
6 lished under this section.

7 **SEC. 3. PROTECTION OF RELIGIOUS OR MORAL EXPRES-**  
8 **SION.**

9 (a) IN GENERAL.—An entity operating a health plan  
10 may fully advise—

11 (1) licensed or certified health care providers at  
12 the time of their employment with the plan or at any  
13 time during such employment; or

14 (2) participants or beneficiaries at the time of  
15 their enrollment under the plan or at any time dur-  
16 ing which such participants or enrollees are covered  
17 under the plan;

18 of the plan's limitations on providing particular medical  
19 services (including limitations on referrals for care pro-  
20 vided outside of the plan) based on the religious or moral  
21 convictions of the entity.

22 (b) HEALTH CARE PROVIDERS.—Nothing in this Act  
23 shall be construed to alter the rights and duties of a health  
24 care provider to determine what medical communications

1 are appropriate with respect to each patient, except as  
2 provided for in section 2.

3 **SEC. 4. DEFINITIONS.**

4 In this Act:

5 (1) HEALTH CARE PROVIDER.—The term  
6 “health care provider” means anyone licensed or cer-  
7 tified under State law to provide health care services  
8 who is operating within the scope of such license.

9 (2) HEALTH INSURANCE ISSUER.—The term  
10 “health insurance issuer” has the meaning given  
11 such term in section 2791(b)(2) of the Public Health  
12 Service Act (as added by the Health Insurance Port-  
13 ability and Accountability Act of 1996).

14 (3) HEALTH PLAN.—The term “health plan”  
15 means a group health plan (as defined in section  
16 2791(a) of the Public Health Service Act (as added  
17 by the Health Insurance Portability and Account-  
18 ability Act of 1996)) and any individual health in-  
19 surance (as defined in section 2791(b)(5)) operated  
20 by a health insurance issuer and includes any other  
21 health care coverage provided through a private or  
22 public entity. In the case of a health plan that is an  
23 employee welfare benefit plan (as defined in section  
24 3(1) of the Employee Retirement Income Security  
25 Act of 1974), any third party administrator or other

1 person with responsibility for contracts with health  
2 care providers under the plan shall be considered,  
3 for purposes of enforcement under this section, to be  
4 a health insurance issuer operating such health plan.

5 (4) MEDICAL COMMUNICATION.—

6 (A) IN GENERAL.—The term “medical  
7 communication” means any communication  
8 made by a health care provider with a patient  
9 of the health care provider (or the guardian or  
10 legal representative of such patient) with re-  
11 spect to—

12 (i) the patient’s health status, medical  
13 care, or treatment options;

14 (ii) any utilization review require-  
15 ments that may affect treatment options  
16 for the patient; or

17 (iii) any financial incentives that may  
18 affect the treatment of the patient.

19 (B) MISREPRESENTATION.—The term  
20 “medical communication” does not include a  
21 communication by a health care provider with a  
22 patient of the health care provider (or the  
23 guardian or legal representative of such patient)  
24 if the communication involves a knowing or will-  
25 ful misrepresentation by such provider.

1           (5) SECRETARY.—The term “Secretary” means  
2           the Secretary of Health and Human Services.

3 **SEC. 5. EFFECTIVE DATE.**

4           This Act shall take effect on the date of enactment  
5 of this Act, except that section 2(a)(3) shall take effect  
6 180 days after such date of enactment.

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