

108TH CONGRESS
2D SESSION

H. R. 5126

To amend the Federal Rules of Evidence to create an explicit privilege
to preserve medical privacy.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 22, 2004

Mr. NADLER (for himself, Mr. SHAYS, Mrs. LOWEY, Mr. RUPPERSBERGER, Mr. FILNER, Ms. BALDWIN, Mr. GRIJALVA, Mr. GEORGE MILLER of California, Mr. MORAN of Virginia, Mr. SERRANO, Mr. CROWLEY, Mrs. MALONEY, Mr. OLVER, Mr. ABERCROMBIE, Mr. WAXMAN, Mr. KUCINICH, Mrs. DAVIS of California, Mr. MCDERMOTT, and Mr. GORDON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend the Federal Rules of Evidence to create an explicit
privilege to preserve medical privacy.

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 “Patients’ Privacy Pro-
5 tection Act of 2004”.

6 **SEC. 2. HEALTH CARE PROVIDER-PATIENT PRIVILEGE.**

7 (a) IN GENERAL.—Article V of the Federal Rules of
8 Evidence is amended by adding at the end the following:

1 “Rule 502. Health Care Provider and Patient

2 “(a) Except as provided in subdivision (b), a patient
3 has a privilege with respect to any evidence consisting of
4 a confidential communication or record made in the course
5 of medical treatment.

6 “(b)(1) A court may order the disclosure of a commu-
7 nication or record otherwise privileged under this rule, to
8 the extent the court determines, after the individual who
9 is the subject of the information in the communication or
10 record has been provided with notice and an opportunity
11 to raise objections, that the public interest in disclosure
12 significantly outweighs the patient’s privacy interests.

13 “(2) If the court orders disclosure under this subdivi-
14 sion, the court shall, to the greatest practicable extent,
15 ensure that the personally identifiable information in the
16 communication or record is redacted, and that the pa-
17 tient’s communications and records remain under seal.

18 “(c) The exception in subdivision (b) does not apply
19 to any other privilege, provided by these rules or other
20 law, with respect to a communication or record subject
21 to the privilege created by this rule.

22 “(d) As used in this rule, the term ‘medical treat-
23 ment’ means medical treatment of the patient by a duly
24 licensed health care provider.”

1 (b) CLERICAL AMENDMENT.—The table of contents
2 at the beginning of the Federal Rules of Evidence is
3 amended by inserting after the item relating to rule 501
4 the following:

“Rule 502. Health care provider and patient.”.

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