

SENATE No. 01858

The Commonwealth of Massachusetts

PRESENTED BY:

Mark C. Montigny

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act prohibiting the use of prescriber-identifiable data for marketing purposes.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|----------------------------|------------------------------------|
| <i>Mark C. Montigny</i> | <i>Second Bristol and Plymouth</i> |
| <i>Gale D. Candaras</i> | <i>First Hampden and Hampshire</i> |
| <i>Sonia Chang-Diaz</i> | <i>Second Suffolk</i> |
| <i>Marc R. Pacheco</i> | <i>First Plymouth and Bristol</i> |
| <i>Patricia D. Jehlen</i> | <i>Second Middlesex</i> |
| <i>Susan C. Fargo</i> | <i>Third Middlesex</i> |
| <i>Kenneth J. Donnelly</i> | <i>Fourth Middlesex</i> |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> |
| <i>Cory Atkins</i> | <i>14th Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>John F. Keenan</i> | <i>Norfolk and Plymouth</i> |

SENATE No. 01858

By Mr. Montigny, petition (accompanied by bill, Senate, No. 1858) of Pacheco, Chang-Diaz, Candaras and other members of the General Court for legislation to prohibit the use of prescriber-identifiable data for marketing purposes [Joint Committee on Health Care Financing].

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act prohibiting the use of prescriber-identifiable data for marketing purposes.

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 118G is hereby amended by inserting after section 33 the following
2 section:—

3 Section 34. It is the intent of the legislature to safeguard the confidentiality of
4 prescriber-identifiable data, protect the integrity of the doctor-patient relationship, maintain the
5 integrity and public trust in the medical profession, and further the state interest in protecting
6 public health and lowering the cost of health care. The legislature intends to regulate the
7 license, transfer, use, or sale of prescriber-identifiable data only for commercial purposes by
8 pharmacies and other similar entities. The intent is not to regulate non-commercial uses, such as
9 reimbursement, quality control, and research. .

10 (a) As used in this section the following words shall, unless the context clearly requires
11 otherwise, have the following meanings:—

12 “Bona-fide clinical trial”, any research project that prospectively assigns human subjects into
13 intervention and comparison groups to study the cause and effect relationship between a medical
14 intervention and health outcome, has received approval from an appropriate Institutional Review
15 Board, and has been registered at ClinicalTrials.gov prior to commencement.

16 “Prescriber-identifiable data”, information that can be used to directly or indirectly identify the
17 prescriber, including, but not limited to, a prescriber’s name, address, telephone number,
18 facsimile number, electronic mail address, photograph or likeness, account number, social
19 security number, National Provider Identifier (NPI) or any other unique number, characteristic,
20 code or information which is likely to lead to the identification of the patient or prescriber.

21 “Commercial purpose”, includes, but is not limited to,

22 (1) advertising, marketing, promoting, or any activity that could be used to
23 influence sales or market share of a pharmaceutical product;

24 (2) influencing or evaluating the prescribing behavior of an individual
25 prescriber;

26 (3) evaluating the effectiveness of a professional pharmaceutical detailing
27 sales force;

28 “Person”, any business, individual, corporation, union, association, firm, partnership, committee,
29 or other organization or group of persons.

30 “Pharmacy”, a facility under the direction or supervision of a registered pharmacist which is
31 authorized in Massachusetts to dispense pharmaceuticals including, but not limited to, retail drug
32 business as defined in Section 1 of Chapter 94C, mail order or Internet pharmacy, pharmacy

33 benefits manager, insurance company, electronic transmission intermediary, or other similar
34 entities.

35 “Prescriber”, a person who is licensed, registered or otherwise authorized to prescribe and
36 administer drugs in the course of professional practice in Massachusetts.

37 “Prescribed product”, includes a biological product as defined in section 251 of the Public Health
38 Service Act, 42 U.S.C. §262 and a device or a drug as defined in section 201 of the Federal
39 Food, Drug and Cosmetic Act, 21 U.S.C. §321.

40 (b) No pharmacy shall license, use, sell, or transfer for any commercial purpose,
41 prescriber-identifiable data.

42 (c) Nothing in this section shall prohibit a pharmacy from collecting, licensing, using,
43 selling, or transferring data for commercial purposes if the data is de-identified and aggregated
44 into categories, including, but not limited to, zip code, geographic region, or medical purposes.

45 (d) Nothing in this section shall prohibit a pharmacy from licensing, using, selling,
46 transferring, or collecting prescriber-identifiable information for non-commercial purposes,
47 including, but not limited to,

48 (i) pharmacy reimbursement, prescription drug formulary or prior
49 authorization compliance;

50 (ii) the dispensing of prescription medications to a patient or to the
51 patient’s authorized representative;

52 (iii) the transfer of information to the patient or patient’s authorized
53 representative;

54 (iv) health care research, including, but not limited to, bona fide
55 clinical trials, product safety studies, and utilization reviews;

56 (v) transfer of prescription records that may occur when a
57 pharmacy's ownership is changed or transferred or between licensed pharmacies;

58 (vi) care management educational communications provided to a
59 patient about the patient's health condition;

60 (e) Nothing in this section shall be interpreted to regulate conduct that takes place
61 wholly outside of the commonwealth.

62 (f) Nothing in this section shall be interpreted to regulate the content, time, place or
63 manner of any discussion between a prescriber and their patient, or a prescriber and any person
64 representing a prescription drug manufacturer.

65 (g) Whoever violates any provision of this section shall be punished by imprisonment
66 for not more than two and one half years in a house of correction, or by a fine of not less than
67 twenty thousand dollars, or by both such fine and imprisonment. Whoever violates any provision
68 of this section after one or more prior convictions of a violation of this section shall be punished
69 by imprisonment in the state prison for not more than 10 years, or by a fine of not more than
70 thirty thousand dollars or by both such fine and imprisonment.

71 (h) A violation of this section shall also constitute an unfair or deceptive act or practice
72 in the conduct of trade in violation of Section 2 of Chapter 93A. Any person whose
73 rights under this section have been violated may institute and prosecute in his own name and on

74 his own behalf, or the attorney general, acting on behalf of the commonwealth, may institute a
75 civil action for injunctive and other equitable relief.

76 If any provision of this act or its application to any person or circumstance is held
77 invalid, the remainder of the act or the application of the provision to other persons or
78 circumstances is not affected.

79 Section 2. This act shall take effect upon passage.