



TO: House Human Services Committee
FROM: Allen Gilbert, executive director, ACLU of Vermont
DATE: Feb. 25, 2015
SUBJECT: H. 98, registries bill

The ACLU has not identified a persuasive reason for the repeal of language in Section 2 (beginning on Line 10 of Page 4) of H. 98, as proposed by the Department of Health.

Should changes be made, however, we wish to make sure that a private right of action is preserved (currently, a private right of action is contained in subsection (4) starting on Line 9 of Page 8 of H. 98).

The proposed language below could be reworked to fit into that subsection, or it could be written as, below, a new sub-chapter within the “Patient Bill of Rights” (Chapter 42) of Title 18.

18 V.S.A. Chapter 42B is added to read:

CHAPTER 42B. HEALTH CARE PRIVACY

§ 1881. DISCLOSURE OF PROTECTED HEALTH INFORMATION

PROHIBITED

(a) It is the intent of the General Assembly:

(1) that the Health Insurance Portability and Accountability Act of 1996 (HIPAA), codified at 42 U.S.C. § 1320d and 45 C.F.R. §§ 160–164, as from time to time amended, serve as the standard for protected health information in this State; and

(2) that in construing the section, the courts of this State shall be guided by the construction of similar terms contained in HIPAA by the courts of the United States.

(b) As used in this section:

(1) “Covered entity shall have the same meaning as in 45 C.F.R.

§ 160.103.

(2) “Protected health information” shall have the same meaning as in
45 C.F.R. § 160.103.

(c) A covered entity shall not disclose protected health information unless
the disclosure is permitted under HIPAA.

§ 1882. PRIVATE CAUSE OF ACTION

A person whose protected health information is disclosed in violation of
subsection 1881(c) of this title may bring an action in Superior Court for
damages, injunctive relief, punitive damages in the case of a willful violation,
and reasonable costs and attorney’s fees. The Court may issue an award for
the person’s actual damages or \$500.00 for a first violation, or \$1,000.00 for
each subsequent violation, whichever is greater. This section shall not limit
any other claims a person aggrieved by a violation of this section may have
under applicable law.