



Vermont Care Partners

1/6/15 Julie
Tessler

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Mental Health
Services

Lincoln Street,
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Northeastern
Family Institute

Rutland Mental
Health Services

Sterling Area
Services

United
Counseling
Services of
Bennington
County

Upper Valley
Services

Washington
County Mental
Health Services

Memorandum

TO: Senator Dick Sears, Chair Senate Judiciary Committee

CC: Members of the Senate Judiciary Committee

FR: Julie Tessler, Vermont Council of Developmental and Mental Health Services

RE: HIPAA Provisions in S.155

DA: December 30, 2015

Vermont Care Partners and our member agencies, the Designated and Specialized Service Agencies, are strongly committed to protect the privacy of those we serve and to comply with HIPAA, FERPA and 42 CFR laws and regulations.

In this context we oppose S.155's provisions related to the new Private Right of Action and Punitive Damages for HIPAA Non-Compliance because the impact on Designated and Specialized Service Agencies in Vermont could be detrimental and existing federal provisions are sufficient. In fact, Vermont is already one of the few states with privacy laws more stringent than HIPAA related to patient privilege.

The new state-based private right of action against covered entities for HIPAA violations in Section 1 of S.155 would enable our clients who believe that their health information was disclosed inappropriately to file a law suit in Vermont Superior Court regardless of the level of violation or whether there has been any harm.

We are concerned that the language would make punitive damages easier to obtain and financial risk to covered health providers more onerous. It may even increase the potential for law suits due to the financial incentives, particularly if there is an unintentional breach in security impacting multiple parties, for instance through computer hacking or loss of a lap top computer.

As has been pointed out by our colleagues at the Vermont Medical Society (VMS), "*Federal law already includes significant penalties which increase dramatically when inappropriate disclosures are willful, intentional or made with the intent to sell the health care information. The range of possible federal penalties includes civil penalties, criminal fines and imprisonment (up to 10 years) and begins at \$100 per violation if the provider did not know (and with reasonable diligence would not have known) that he or she violated HIPAA and increases to \$250,000 per violation when the disclosure is made with intent to sell the information.*"

We also agree with VMS that working with the federal government to achieve compliance, if any violations should occur is the right action instead of focusing on penalties to achieve full HIPAA compliance. We have worked conscientiously with attorneys and other experts to ensure that we protect the privacy of those we serve and feel reasonably sure that we are meeting the requirements of the law.