



To: Senate Committee on Judiciary
Sen. Dick Sears Jr., Chair
Sen. Joe Benning, Vice Chair
Sen. Tim Ashe
Sen. Jeanette K. White
Sen. Alice W. Nitka, Clerk

From: Peter Cobb, VNAV Director
Date: January 6, 2016

Re: S. 155 Privacy Legislation

Please consider the following comments from the VNAs of Vermont concerning S. 155, the legislation on privacy protection.

The members of the VNAs of Vermont, which represents the 10 not-for-profit home care and hospice agencies in Vermont, are committed to assuring that the medical records of all our patients are kept private. All home care staff know they cannot share any information whatsoever about their patients with anyone who is not authorized to get this information. The privacy rule protects all “*individually identifiable health information*” in any form whether electronic, written or oral. We take pride in assuring the confidentiality of our patients.

We applaud the work of your committee to draft legislation with a goal toward strengthening the privacy protections of medical records. We do, however, have concerns with Section 1 of S.155 that would create a state-based private right of action against both the health care staff and the agency which is above and beyond the already strong protections provided by the Health Insurance Portability and Accountability Act (HIPAA), the federal privacy rule. This proposal would enable patients who believe their health information was disclosed inappropriately to file a lawsuit in Vermont Superior Court against the individual provider and the home care agency, even if no harm has been done.

We are concerned that the legislation does not require that the inappropriate disclosures of health information be “willful” or “intentional” to qualify for punitive damages. This significantly lowers the standards for punitive damages. Federal law already includes very significant penalties when inappropriate disclosures are willful, intentional or made with the intent to sell the health care information.

Thank you for your attention to our concerns. Should you have any questions, please let me know.

Sincerely,
Peter Cobb, VNAVT Director