

Date: March 13, 2025

To: Chair Harrison and Members of the Senate Committee on Institutions

From: Coalition of Vermont Health Care Organizations (signatories below)

Re: S. 71 - An act relating to consumer data privacy and online surveillance

Our organizations are made up of and represent health care providers who use health care data on a daily basis to improve patient care and health outcomes in our state -and all are already subject to a number of federal and state data privacy laws and regulations, including the Health Insurance Portability and Accountability Act (HIPAA).

We are writing to submit our opposition to S. 71, An act relating to consumer data privacy and online surveillance, and in support of S. 93, An act relating to consumer data privacy.

Our organizations consider the privacy and security of an individual's health data to be critical to the work we do and support the goals of both S. 71 and S. 93 to provide consumers rights and protections over their personal information, just as HIPAA-covered entities are already held at a high standard for the privacy and security of protected health information.

We know you are likely familiar with the HIPAA standards related to protecting health information. For a helpful overview, see the Health and Human Services (HHS) Overview of the HIPAA Privacy Rule,¹ outlining the requirements that apply to HIPAA-covered entities, including:

- issuing a notice of privacy practices to all patients regarding how data is protected;
- obtaining patient authorization for many uses of data;
- limiting use of data to the “minimum necessary;”
- employee training regarding HIPAA privacy requirements;
- applying HIPAA requirements to “business associates” of HIPAA-covered entities – this includes all business partners that receive protected health information, such as entities that store patient records, create patient websites or portals, process payments and more;
- enforcement for noncompliance for HIPAA-covered entities and business associates² including significant penalties for violations – to date, HHS’ Office of Civil Rights has imposed civil money penalties of \$144,878,972 for HIPAA violations;³
- breach notification requirements.

Separate comprehensive rules under HIPAA require that health care entities protect the data security of electronic information and address cybersecurity (the “Security Rule”)⁴ and require notification of breaches (the “Breach Notification Rule”).⁵

Vermont in state law has adopted HIPAA as the standard for covered entities – see 18 V.S.A. § 1881. As health care services in Vermont become more integrated, many covered entities in Vermont are also subject to federal regulation 42 CFR Part 2, which outlines further standards for managing and sharing substance use disorder treatment records.⁶

¹ <https://www.hhs.gov/hipaa/for-professionals/privacy/laws-regulations/index.html#>

² <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/enforcement-process/index.html>

³ <https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/data/enforcement-highlights/index.html>

⁴ <https://www.hhs.gov/hipaa/for-professionals/security/index.html>

⁵ <https://www.hhs.gov/hipaa/for-professionals/breach-notification/index.html>

⁶ <https://www.hhs.gov/hipaa/for-professionals/special-topics/hipaa-part-2/index.html>

Our organizations have asked and have yet to be presented with concrete, non-hypothetical examples of how HIPAA is insufficient to protect Vermonters' health care data and why additional regulation is necessary for health care entities in Vermont. Our organizations support the approach taken in S. 93, exempting HIPAA-covered entities from additional regulatory burden. As drafted, the exemptions in S. 71 fall short of meeting the needs of Vermont's health care organizations and will lead to both high consumer confusion and high compliance costs.

Consumer confusion

Health care providers have already seen firsthand that applying two similar but different sets of privacy requirements to patient data obstructs confuses patients when required to comply with both HIPAA and 42 CFR Part 2. This has led not only to barriers to care but confusion for patients such as with whom their records can be shared, in which circumstances data can be shared, and when an authorization is required. The federal government now realizes the shortcomings of two similar but not aligned standards and just last year released updated 42 CFR Part 2 regulations to try to align the sharing of and access to 42 CFR part 2 data more closely to HIPAA.⁷

Compliance costs

Small health care entities will first need to complete a comprehensive legal and operational analysis of what data they hold that is exempt under the statute as part of a "health care record" or what data is covered. The organization will then have to complete an analysis of how and whether they can protect this data under HIPAA. This takes time and resources away from the mission work of organizations with tight budgets and already tapped capacity. The required investments will disproportionately impact small Vermont-based health care organizations compared to a large corporation. According to United Way, in Colorado there have been organizations that have had to spend up to \$40,000 on consultants to help them comply with new data privacy regulations. Many health care entities in Vermont – including health centers, designated agencies, and home health organizations – are already running at an operating loss. You have no doubt read the recent reports of primary care offices closing in Rockingham,⁸ Waitsfield,⁹ and Stowe¹⁰ due to budget pressures. Depending on the payment structure for each organization, additional compliance costs either get passed along to consumers in the form of health care premiums, the state if Medicaid reimbursement adjusts, or ultimately, a reduction in health care services to Vermonters or the closure of organizations.

To address the needs of HIPAA-covered entities to engage in appropriate uses of data, as well as to sustainably operate to continue to meet the health care needs of Vermonters, we respectfully request the committee support S. 93 in lieu of S. 71.

Sincerely,

Jessa Barnard
Executive Director, Vermont Medical Society
jbarnard@vtmd.org

Beth Anderson
President & CEO, VITL

⁷ <https://www.hhs.gov/hipaa/for-professionals/regulatory-initiatives/fact-sheet-42-cfr-part-2-final-rule/index.html>

⁸ <https://vtdigger.org/2025/02/28/very-very-financially-fragile-vermonts-federally-qualified-health-centers-are-struggling/>

⁹ <https://mrhealthcenter.org/clinic-closing/>

¹⁰ <https://vtdigger.org/2025/02/07/lamoille-health-partners-to-close-stowe-practice/>

banderson@vitl.net

Devon Green
VP of Government Relations, Vermont Association of Hospitals and Health Systems
devon@vahhs.org

Jill Mazza Olson
Executive Director, VNAs of Vermont
Jill@vnavt.org

Stephanie Winters
Executive Director, Vermont Academy of Family Physicians; American Academy of Pediatrics- VT
Chapter; VT Psychiatric Association
swinters@vtmd.org

Mary Kate Mohlman
Director of Vermont Public Policy, Bi-State Primary Care Association
mmohlman@bistatepca.org

Helen Labun
Executive Director, Vermont Health Care Association
laura@mmrvt.com

Amy Johnson
Director of Government Affairs and Communications, Vermont Care Partners
amy@vermontcarepartners.org

Jessica Barquist
Vice President of Public Affairs, VT, Planned Parenthood of Northern New England
Jessica.Barquist@ppnne.org