

SENATE BILL 417

J3

9lr1396
CF 9lr0814

By: **Senators Pugh, Conway, Currie, Exum, Harrington, Kelley, King, Lenett, Madaleno, Middleton, Peters, Raskin, and Rosapepe**
Introduced and read first time: February 2, 2009
Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Prescription Confidentiality Act**

3 FOR the purpose of prohibiting certain patient–identifiable or prescriber–identifiable
4 information from being licensed, transferred, used, or sold for any commercial
5 purpose by certain entities; making certain provisions inapplicable to certain
6 actions under certain circumstances; prohibiting certain provisions from being
7 construed to prohibit certain actions; defining certain terms; and generally
8 relating to the confidentiality of certain information on a prescription.

9 BY adding to
10 Article – Health – General
11 Section 21–220.1
12 Annotated Code of Maryland
13 (2005 Replacement Volume and 2008 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Health – General
16 Section 21–1215
17 Annotated Code of Maryland
18 (2005 Replacement Volume and 2008 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article – Health – General**

22 **21–220.1.**

23 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
24 MEANINGS INDICATED.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



- 1 **(2) “CARRIER” MEANS:**
- 2 **(I) AN INSURER;**
- 3 **(II) A NONPROFIT HEALTH SERVICE PLAN;**
- 4 **(III) A HEALTH MAINTENANCE ORGANIZATION;**
- 5 **(IV) A DENTAL PLAN ORGANIZATION;**
- 6 **(V) A THIRD-PARTY ADMINISTRATOR; OR**
- 7 **(VI) ANY OTHER PERSON THAT PROVIDES HEALTH BENEFIT**
8 **PLANS SUBJECT TO REGULATION BY THE STATE.**

- 9 **(3) “COMMERCIAL PURPOSE” MEANS:**
- 10 **(I) ADVERTISING;**
- 11 **(II) MARKETING;**
- 12 **(III) PROMOTING;**
- 13 **(IV) DETAILING; OR**
- 14 **(V) ANY OTHER ACTIVITY THAT COULD BE USED TO:**
- 15 **1. INFLUENCE SALES OR MARKET SHARE OF A**
16 **PHARMACEUTICAL PRODUCT;**
- 17 **2. INFLUENCE OR EVALUATE THE PRESCRIBING**
18 **BEHAVIOR OF A HEALTH CARE PRACTITIONER; OR**
- 19 **3. EVALUATE THE EFFECTIVENESS OF A**
20 **PROFESSIONAL PHARMACEUTICAL DETAILING SALES FORCE.**

- 21 **(4) “ELECTRONIC TRANSMISSION INTERMEDIARY” MEANS AN**
22 **ENTITY THAT PROVIDES THE INFRASTRUCTURE THAT CONNECTS THE**
23 **COMPUTER SYSTEMS OR OTHER ELECTRONIC DEVICES USED BY PRESCRIBERS,**
24 **PHARMACIES, HEALTH CARE FACILITIES, PHARMACY BENEFITS MANAGERS, AND**
25 **CARRIERS, OR AGENTS AND CONTRACTORS OF PRESCRIBERS, PHARMACIES,**
26 **HEALTH CARE FACILITIES, PHARMACY BENEFITS MANAGERS, AND CARRIERS,**
27 **TO FACILITATE THE SECURE TRANSMISSION OF AN INDIVIDUAL’S**

1 **PRESCRIPTION DRUG ORDER, REFILL, AUTHORIZATION REQUEST, CLAIM,**
2 **PAYMENT, OR OTHER PRESCRIPTION DRUG INFORMATION.**

3 **(B) THIS SECTION DOES NOT APPLY TO:**

4 **(1) THE LICENSE, TRANSFER, USE, OR SALE OF PRESCRIPTION**
5 **INFORMATION FOR THE PURPOSE OF:**

6 **(I) PHARMACY REIMBURSEMENT;**

7 **(II) FORMULARY COMPLIANCE;**

8 **(III) CARE MANAGEMENT;**

9 **(IV) UTILIZATION REVIEW; OR**

10 **(V) HEALTH CARE RESEARCH; OR**

11 **(2) THE COLLECTION, USE, TRANSFER, OR SALE OF**
12 **INFORMATION DERIVED FROM OR RELATING TO A PRESCRIPTION FOR A**
13 **COMMERCIAL PURPOSE IF THE INFORMATION:**

14 **(I) IS NOT PATIENT-IDENTIFIABLE OR**
15 **PRESCRIBER-IDENTIFIABLE; AND**

16 **(II) IS AGGREGATED BY ZIP CODE, OTHER GEOGRAPHIC**
17 **REGION, OR MEDICAL SPECIALTY.**

18 **(C) PATIENT-IDENTIFIABLE OR PRESCRIBER-IDENTIFIABLE**
19 **INFORMATION DERIVED FROM OR RELATING TO A PRESCRIPTION MAY NOT BE**
20 **LICENSED, TRANSFERRED, USED, OR SOLD FOR ANY COMMERCIAL PURPOSE BY:**

21 **(1) A PHARMACY BENEFITS MANAGER;**

22 **(2) A CARRIER;**

23 **(3) AN ELECTRONIC TRANSMISSION INTERMEDIARY; OR**

24 **(4) A RETAIL, MAIL ORDER, OR INTERNET PHARMACY.**

25 **(D) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT:**

26 **(1) THE DISPENSING OF PRESCRIPTION DRUGS TO A PATIENT OR**
27 **THE PATIENT'S AUTHORIZED REPRESENTATIVE;**

1 **(2) THE TRANSMISSION OF PRESCRIPTION INFORMATION**
2 **BETWEEN AN AUTHORIZED PRESCRIBER AND A LICENSED PHARMACY;**

3 **(3) THE TRANSFER OF PRESCRIPTION INFORMATION BETWEEN**
4 **LICENSED PHARMACIES;**

5 **(4) THE TRANSFER OF PRESCRIPTION RECORDS THAT MAY**
6 **OCCUR IN THE EVENT A PHARMACY OWNERSHIP IS CHANGED OR TRANSFERRED;**
7 **OR**

8 **(5) CARE MANAGEMENT EDUCATIONAL COMMUNICATIONS**
9 **PROVIDED TO A PATIENT ABOUT:**

10 **(I) THE PATIENT'S HEALTH CONDITION;**

11 **(II) ADHERENCE TO A PRESCRIBED COURSE OF THERAPY;**

12 **(III) THE DRUG BEING DISPENSED;**

13 **(IV) TREATMENT OPTIONS; OR**

14 **(V) CLINICAL TRIALS.**

15 21–1215.

16 (a) This section does not apply to a violation of § 21–220(b)(4) of this title.

17 (b) A person who violates any provision of Subtitle 2 of this title or any
18 regulation adopted under Subtitle 2 of this title is guilty of a misdemeanor and on
19 conviction is subject to:

20 (1) A fine not exceeding \$10,000 or imprisonment not exceeding 1 year
21 or both; or

22 (2) If the person has been convicted once of violating Subtitle 2 of this
23 title, a fine not exceeding \$25,000 or imprisonment not exceeding 3 years or both.

24 (c) In addition to any criminal penalties imposed under this section, a person
25 who violates any provision of Subtitle 2 of this title, any rule or regulation adopted
26 under Subtitle 2 of this title, or any term, condition, or limitation of any license or
27 registration issued under Subtitle 2 of this title:

28 (1) Is subject to a civil penalty not exceeding \$5,000, in an action in
29 any District Court; and

1 (2) May be enjoined from continuing the violation.

2 (d) Each day on which a violation occurs is a separate violation under this
3 section.

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2009.