

**SENATE . . . . . No. 1858**

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The Commonwealth of Massachusetts

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PRESENTED BY:

***Mark C. Montigny***

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*To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:*

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act prohibiting the use of prescriber-identifiable data for marketing purposes.

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PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Mark C. Montigny</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Gale D. Candaras</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Sonia Chang-Diaz</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Marc R. Pacheco</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Patricia D. Jehlen</i>	<input type="checkbox"/> [District] <input type="checkbox"/>
<i>Susan C. Fargo</i>	<input type="checkbox"/> [District] <input type="checkbox"/>

*Kenneth J. Donnelly*

*[District]*

*Martha M. Walz*

*8th Suffolk*

*Cory Atkins*

*14th Middlesex*

*James B. Eldridge*

*[District]*

*John F. Keenan*

*[District]*

**SENATE . . . . . No. 1858**

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By Mr. Montigny, a petition (accompanied by bill, Senate, No. 1858) of Mark C. Montigny, Gale D. Candaras, Sonia Chang-Diaz, Marc R. Pacheco and other members of the General Court for legislation to prohibit the use of prescriber-identifiable data for marketing purposes. Health Care Financing.

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The Commonwealth of Massachusetts

An Act prohibiting the use of prescriber-identifiable data for marketing purposes.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1                   Section 1. Chapter 118G is hereby amended by inserting after section 33 the  
2 following section:—

3                   Section 34. It is the intent of the legislature to safeguard the confidentiality of  
4 prescriber-identifiable data, protect the integrity of the doctor-patient relationship, maintain the  
5 integrity and public trust in the medical profession, and further the state interest in protecting  
6 public health and lowering the cost of health care. The legislature intends to regulate the  
7 license, transfer, use, or sale of prescriber-identifiable data only for commercial purposes by  
8 pharmacies and other similar entities. The intent is not to regulate non-commercial uses, such as  
9 reimbursement, quality control, and research. .

10                   (a) As used in this section the following words shall, unless the context clearly  
11 requires otherwise, have the following meanings:—

12                   “Bona-fide clinical trial”, any research project that prospectively assigns human subjects  
13 into intervention and comparison groups to study the cause and effect relationship between a  
14 medical intervention and health outcome, has received approval from an appropriate Institutional  
15 Review Board, and has been registered at ClinicalTrials.gov prior to commencement.

16                   “Prescriber-identifiable data”, information that can be used to directly or indirectly  
17 identify the prescriber, including, but not limited to, a prescriber’s name, address, telephone  
18 number, facsimile number, electronic mail address, photograph or likeness, account number,  
19 social security number, National Provider Identifier (NPI) or any other unique number,  
20 characteristic, code or information which is likely to lead to the identification of the patient or  
21 prescriber.

22 “Commercial purpose”, includes, but is not limited to,

23 (1) advertising, marketing, promoting, or any activity that could be  
24 used to influence sales or market share of a pharmaceutical product;

25 (2) influencing or evaluating the prescribing behavior of an  
26 individual prescriber;

27 (3) evaluating the effectiveness of a professional pharmaceutical  
28 detailing sales force;

29 “Person”, any business, individual, corporation, union, association, firm, partnership,  
30 committee, or other organization or group of persons.

31 “Pharmacy”, a facility under the direction or supervision of a registered pharmacist which  
32 is authorized in Massachusetts to dispense pharmaceuticals including, but not limited to, retail  
33 drug business as defined in Section 1 of Chapter 94C, mail order or Internet pharmacy, pharmacy  
34 benefits manager, insurance company, electronic transmission intermediary, or other similar  
35 entities.

36 “Prescriber”, a person who is licensed, registered or otherwise authorized to prescribe and  
37 administer drugs in the course of professional practice in Massachusetts.

38 “Prescribed product”, includes a biological product as defined in section 251 of the  
39 Public Health Service Act, 42 U.S.C. §262 and a device or a drug as defined in section 201 of the  
40 Federal Food, Drug and Cosmetic Act, 21 U.S.C. §321.

41 (b) No pharmacy shall license, use, sell, or transfer for any commercial  
42 purpose, prescriber-identifiable data.

43 (c) Nothing in this section shall prohibit a pharmacy from collecting, licensing,  
44 using, selling, or transferring data for commercial purposes if the data is de-identified and  
45 aggregated into categories, including, but not limited to, zip code, geographic region, or medical  
46 purposes.

47 (d) Nothing in this section shall prohibit a pharmacy from licensing, using,  
48 selling, transferring, or collecting prescriber-identifiable information for non-commercial  
49 purposes, including, but not limited to,

50 (i) pharmacy reimbursement, prescription drug formulary  
51 or prior authorization compliance;

52 (ii) the dispensing of prescription medications to a patient  
53 or to the patient’s authorized representative;

54 (iii) the transfer of information to the patient or patient's  
55 authorized representative;

56 (iv) health care research, including, but not limited to, bona  
57 fide clinical trials, product safety studies, and utilization reviews;

58 (v) transfer of prescription records that may occur when a  
59 pharmacy's ownership is changed or transferred or between licensed pharmacies;

60 (vi) care management educational communications  
61 provided to a patient about the patient's health condition;

62 (e) Nothing in this section shall be interpreted to regulate conduct that takes  
63 place wholly outside of the commonwealth.

64 (f) Nothing in this section shall be interpreted to regulate the content, time,  
65 place or manner of any discussion between a prescriber and their patient, or a prescriber and any  
66 person representing a prescription drug manufacturer.

67 (g) Whoever violates any provision of this section shall be punished by  
68 imprisonment for not more than two and one half years in a house of correction, or by a fine of  
69 not less than twenty thousand dollars, or by both such fine and imprisonment. Whoever violates  
70 any provision of this section after one or more prior convictions of a violation of this section  
71 shall be punished by imprisonment in the state prison for not more than 10 years, or by a fine of  
72 not more than thirty thousand dollars or by both such fine and imprisonment.

73 (h) A violation of this section shall also constitute an unfair or deceptive act or  
74 practice in the conduct of trade in violation of Section 2 of Chapter 93A. Any person  
75 whose rights under this section have been violated may institute and prosecute in his own name  
76 and on his own behalf, or the attorney general, acting on behalf of the commonwealth, may  
77 institute a civil action for injunctive and other equitable relief.

78 If any provision of this act or its application to any person or circumstance is  
79 held invalid, the remainder of the act or the application of the provision to other persons or  
80 circumstances is not affected.

81 Section 2. This act shall take effect upon passage.