

HOUSE No. 01497

The Commonwealth of Massachusetts

PRESENTED BY:

Stephen Kulik

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 bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Denise Andrews</i>	<i>2nd Franklin</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>Jennifer E. Benson</i>	<i>37th Middlesex</i>
<i>John J. Binienda</i>	<i>17th Worcester</i>
<i>Cheryl A. Coakley-Rivera</i>	<i>10th Hampden</i>
<i>Benjamin B. Downing</i>	<i>Berkshire, Hampshire, and Franklin</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>
<i>Carlos Henriquez</i>	<i>5th Suffolk</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>George Ross</i>	<i>2nd Bristol</i>
<i>John W. Scibak</i>	<i>2nd Hampshire</i>
<i>Carl M. Sciortino, Jr.</i>	<i>34th Middlesex</i>
<i>David B. Sullivan</i>	<i>6th Bristol</i>
<i>Martha M. Walz</i>	<i>8th Suffolk</i>
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>

<i>Nick Collins</i>	<i>4th Suffolk</i>
<i>Carolyn C. Dykema</i>	<i>8th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Patricia D. Jehlen</i>	<i>Second Middlesex</i>
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Alice K. Wolf</i>	<i>25th Middlesex</i>
<i>Michael Finn</i>	<i>6th Hampden</i>
<i>Gale D. Candaras</i>	<i>First Hampden and Hampshire</i>
<i>Gailanne Cariddi</i>	<i>1st Berkshire</i>
<i>Linda Dorcena Forry</i>	<i>12th Suffolk</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>
<i>Stephen Stat Smith</i>	<i>28th Middlesex</i>
<i>Theodore C. Spiliotis</i>	<i>13th Essex</i>
<i>Joyce A. Spiliotis</i>	<i>12th Essex</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>

HOUSE No. 01497

By Mr. Stephen Kulik of Worthington, petition (accompanied by bill, House, No. 01497) of Alice K. Wolf and others for legislation to regulate the license, transfer, use, or sale of prescriber-identifiable data only for commercial purposes by pharmacies. Joint Committee on Public Health.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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 following
2 section:—

3 Section 34. It is the intent of the legislature to safeguard the confidentiality of prescriber-
4 identifiable data, protect the integrity of the doctor-patient relationship, maintain the integrity
5 and public trust in the medical profession, and further the state interest in protecting public
6 health and lowering the cost of health care. The legislature intends to regulate the license,
7 transfer, use, or sale of prescriber-identifiable data only for commercial purposes by pharmacies
8 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 requires
11 otherwise, have the following meanings:—

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

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

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

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

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

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

26

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

29 “Pharmacy”, a facility under the direction or supervision of a registered pharmacist which is
30 authorized in Massachusetts to dispense pharmaceuticals including, but not limited to, retail drug
31 business as defined in Section 1 of Chapter 94C, mail order or Internet pharmacy, pharmacy

32 benefits manager, insurance company, electronic transmission intermediary, or other similar
33 entities.

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

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

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

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

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

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

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

50 (iii) the transfer of information to the patient or patient’s authorized representative;

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

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

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

57

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

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

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

69 (h) A violation of this section shall also constitute an unfair or deceptive act or practice in the
70 conduct of trade in violation of Section 2 of Chapter 93A. Any person whose rights under this
71 section have been violated may institute and prosecute in his own name and on his own behalf,

72 or the attorney general, acting on behalf of the commonwealth, may institute a civil action for
73 injunctive and other equitable relief.

74 (i) If any provision of this act or its application to any person or circumstance is held invalid,
75 the remainder of the act or the application of the provision to other persons or circumstances is
76 not affected.

77 SECTION 2. This act shall take effect upon passage.