

SENATE HEALTH, HUMAN SERVICES AND SENIOR
CITIZENS COMMITTEE

STATEMENT TO

SENATE, No. 3493

STATE OF NEW JERSEY

DATED: OCTOBER 28, 2024

The Senate Health, Human Services and Senior Citizens Committee reports favorably Senate Bill No. 3493.

This bill requires health care providers, business associates of a covered entity, and carriers to receive affirmative written consent in order to disclose a patient's or covered person's medical information regarding reproductive health care services, with limited exceptions, unless disclosure is necessary to provide those services. Under the bill: "health care provider" means an individual or entity which, acting within the scope of its licensure or certification, provides a health care service; a "business associate of a covered entity" means the same as those terms are defined under federal "Health Insurance Portability and Accountability Act" rules, or a person or entity that performs certain functions or activities that involve the use or disclosure of protected health information on behalf of, or provides services to, health plans, health care clearinghouses, and health care providers; "carrier" means an insurance company, health service corporation, hospital service corporation, medical service corporation, or health maintenance organization authorized to issue health benefits plans in this State; and "reproductive health care services" means all medical, surgical, counseling, or referral services relating to the human reproductive system including, but not limited to, services relating to pregnancy, contraception, or termination of a pregnancy.

Specifically, this bill prohibits a health care provider, a business associate of a covered entity, or carrier from intentionally sharing, selling, using for marketing, or otherwise disclosing any personally identifiable medical information regarding reproductive health care services for any purpose not necessary to provide, or pay benefits for, those services, without the affirmative written consent of the patient or the covered person, or an authorized legal representative. Under the bill, "Medical information" includes information that is acquired using in-person or telephone communication, submitted documentation, a mobile application, an Internet website, or a wearable device. Further, "affirmative written consent" means a freely given, specific agreement collected on a standalone form, which clearly states to the patient how records containing medical information could be used and to whom the

contents of the records could be disclosed, and allows the patient to refuse consent for specific disclosures.

The bill further mandates that a health care provider, a business associate of a covered entity, or carrier are required to inform a patient or a covered person, or authorized legal representative, of the right to withhold such affirmative written consent at or before the time reproductive health care services are rendered or at such time as the covered person discloses any information relating to reproductive health care services that have been previously rendered.

The bill allows for disclosure without affirmative written consent under certain circumstances. These exceptions include when disclosure is: 1) to medical personnel to the extent necessary to meet a bona fide medical emergency; 2) to the extent that the health care provider or carrier is a covered entity and the disclosure is made to a business associate under a valid business associate agreement; 3) as required to comply with the laws of this State, federal law, or the Rules of Court; 4) pursuant to a court order issued by a court of competent jurisdiction in this State upon a showing of good cause; 5) by a health care provider or carrier against whom a claim has been made, for use in the defense of the action or proceeding; 6) to certain State entities or licensing boards for records of a patient or covered person in connection with an investigation of a complaint, if the records are related to the complaint; 7) to a federal or State agency charged with investigating known or, in good faith, suspected child abuse, abuse of an elderly individual, abuse of an individual who is incapacitated, or abuse of an individual with a physical or mental disability, if such disclosure is requested in connection with an investigation of abuse that would constitute a crime under the laws of this State and such records are related to such investigation; and 8) pursuant to regulations promulgated by the Commissioners of Health and Banking and Insurance.

Under the bill, if a court of competent jurisdiction finds that a health care provider or carrier has violated the provisions of this bill, the court may award damages, computed at a rate of \$1,000 per violation, reasonable attorney's fees, and the costs incurred in maintaining that civil action.

Finally, nothing contained in the bill is to be construed to limit, diminish, or abrogate the rights of a person under the federal "Health Insurance Portability and Accountability Act of 1996," Pub.L.104-191 or the obligations of a health care provider or carrier under that law.