

their health information when it stripped away key privacy protections established during the Clinton Administration. By modifying the Privacy Rule finalized in December 2000, HHS eliminated your right to decide whether your medical information can be shared for the purpose of health care treatment, payment, and so-called "health care operations." These modifications took effect on October 15th.

In the case of treatment, payment and health care operations, the Bush Administration's modifications permit your medical secrets to be used and disclosed to doctors, pharmacists, health insurers, and others without your prior consent.

While treatment and payment are terms that consumers understand and associate with health care, "health care operations" is a category tied closely to commerce, not patient care. In fact, the Bush Administration modifications make clear that health care operations is a vast category that has more to do with business mergers than better medicines:

According to Section 164.501 of the Bush modifications, health care operations means: "The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity."

It is understood that this category includes business planning, underwriting, fundraising, and other activities. This means that your private health information can be used without your permission to serve the commercial interests of health care companies, including during transactions such as the sale of an HMO. The Clinton Administration's definition of health care operations not only was narrower, but it also required patient consent before personal health information could be used and disclosed for this purpose.

The Stop Taking Our Health Privacy, or "STOHP", Act puts patients' privacy first by closing massive "privacy peepholes" that HHS opened in these three key areas:

1. Consent: The STOHP Act restores the right of patients to decide whether or not to permit the use and disclosure of their personal health information for purposes of health care treatment, payment and "health care operations." The STOHP Act includes common-sense exceptions to the consent requirement for such purposes as filling a prescription and making referrals. In August, HHS eliminated patient consent in these three important cases, denying patients the fundamental right to decide for themselves whether to share their private health information.

2. Marketing: The STOHP Act ensures that pharmacists do not become secret agents for drug companies. When you receive treatment recommendations from your pharmacist, you should not have to wonder who stands to benefit more: you or the pharmacist or drug company. Our bill would reverse the change that HHS made to the marketing definition, which allows health providers to send unsolicited health recommendations to patients that are paid for by drug companies but do not inform patients of the pharmacist's financial incentives or provide patients the opportunity to opt-out of receiving such communications in the future.

3. Disclosures to FDA-regulated entities like drug companies: The STOHP Act narrows the purposes for which personal medical information can be used or disclosed to these entities

without patient consent. Our bill limits non-consensual disclosure to these entities for the purpose of strict public health priorities such as drug recalls. The August modifications created a broader exemption that allows non-consensual disclosure of patient information to drug companies for a wide range of activities, which may include marketing campaigns.

I am pleased to be joined by my colleagues Representatives DINGELL, WAXMAN, BERMAN and CAPUANO as we introduce the Stop Taking Our Health Privacy Act of 2002.

Today we take steps to apply age-old principles of medical privacy to the realities of the information age. Today we seek to restore longstanding patient protections, ensure the confidentiality of the physician-patient relationship, and rebuild patient trust in the health care system, all of which are essential for the delivery of quality, thorough health care.

REGARDING H.R. 5646, THE STOP
TAKING OUR HEALTH PRIVACY
ACT OF 2002

HON. HENRY A. WAXMAN

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, October 16, 2002

Mr. WAXMAN. Mr. Speaker, Americans are deeply concerned with ensuring the privacy of their health information. Every day, in fact, the need for medical privacy protections grows more urgent. Advances in information systems are increasing the possibilities for accessing health information, and genetic developments are increasing capabilities to screen for sensitive information regarding an individual's susceptibility to certain conditions or diseases.

Unfortunately, the Bush Administration recently took a major step backward in providing medical privacy protections to American consumers. In August 2002, the Administration opened up large loopholes in medical privacy protection with changes to the Federal medical privacy rule that had been finalized in December 2000 by the Clinton Administration.

The medical privacy rule was the culmination of many years of hearings, study, and analysis in which the Administration, members of Congress, and a multitude of interested parties participated. The rule established a sound foundation for addressing the complex issues relating to medical records privacy.

But the Bush Administration's August 2002 changes undermined the privacy protection provided by the rule. The changes eliminated the rule's requirement that individuals must give consent before their personal health information can be used for treatment, payment, and a broad category of activities called "health care operations."

The Bush Administration also decreased privacy protections relating to marketing activities by removing privacy protections for activities that most consumers consider to be marketing.

Further, in a so-called "public health" provision, the Bush Administration created a broad exemption that allows disclosures of health information without patient consent to drug companies and other entities regulated by the FDA for a wide range of purposes. The December 2000 rule, in contrast, allowed such disclosures only for a narrowly defined list of health-related activities such as reporting adverse events associated with drugs.

Because of the damage the Bush Administration did to medical privacy in August 2002, I am joining Representative ED MARKEY, Representative JOHN DINGELL, and others in introducing H.R. 5646, the Stop Taking Our Health Privacy Act of 2002. This bill would: (1) reinstate the December 2000 rule's patient consent requirement for treatment, payment, and health care operations while ensuring that this requirement does not undermine essential health care activities such as filling prescriptions and making referrals; (2) strike the Bush Administration's definition of "marketing," thereby ensuring that the rule's privacy protections apply to activities consumers consider marketing; and (3) eliminate the broad exemption the Bush Administration created that would have allowed disclosure without consent to drug companies, while ensuring that disclosures essential for public health purposes are allowed.

This bill is necessary to restore Federal medical privacy protections that were taken away by the Bush Administration. At the least, Congress should ensure that Americans have at least the same medical privacy protections that were established in the December 2000 rule.

Congress of course must go beyond remedying the damage done by the Bush Administration. In large part due to statutory restrictions on the authority of the Secretary of Health and Human Services, gaps in medical privacy protection remained after the December 2000 rule. We need to ensure that all entities that maintain an individual's health records take appropriate steps to protect the privacy of that information. We also need to provide protections against discrimination by employers and health insurers based on an individual's genetic information—protections that are increasingly important as we continue to gain understanding of the human genome.

I will continue to work to enact comprehensive protections regarding the disclosure and use of individuals' personal health information.

AUTHORIZATION FOR USE OF
MILITARY FORCE AGAINST IRAQ
RESOLUTION OF 2002

SPEECH OF

HON. XAVIER BECERRA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, October 10, 2002

Mr. BECERRA. Mr. Speaker, any nation engaged in a program of building weapons of mass destruction presents a danger to international peace and stability. Any leader who flouts the rule of law is a menace to liberty and democracy.

Over the past couple of months the President has attempted to lay out the case for aggression against Iraq. I agree with the President that the actions of Saddam Hussein in his defiance and deception of the international community reveal a "history of aggression."

In my mind, the President has made a strong case that Iraq must disarm, pursuant to the United Nations resolutions enacted following the close of the Persian Gulf War. But the President did not convince me that we should go to war and go it alone. Nor has he made the case that we should change our longstanding policy and defy international law and commit to a first strike.