Bill as Introduced

SB 369- AS AMENDED BY THE SENATE

2/3/00 3071s

2000 SESSION

00-2472
01/10

SENATE BILL ***369***

AN ACT establishing a committee to conduct a study on the need for standards to protect health information privacy.

SPONSORS: Sen. Wheeler, Dist 21; Rep. M. Fuller Clark, Rock 36; Rep. Taylor, Straf 11

COMMITTEE: Insurance

AMENDED ANALYSIS

This bill establishes a committee to conduct a study on the need for standards to protect health information privacy.

Explanation: Matter added to current law appears in ***bold italics.***
Matter removed from current law appears [~~in brackets and struckthrough.~~]
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

SB 369- AS AMENDED BY THE SENATE

2/3/00 3071s

00-2472
01/10

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand

AN ACT establishing a committee to conduct a study on the need for standards to protect health information privacy.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Committee Established. There is established a committee to conduct a study on the need for standards to protect health information privacy.

2 Membership and Compensation.

I. The members of the committee shall be as follows:

(a) Five members of the senate, appointed by the president of the senate.

(b) Five members of the house of representatives, appointed by the speaker of the house.

II. The committee shall solicit information and participation from representatives of affected groups, organizations, or agencies, including, but not limited to:

(a) The commissioner of insurance.

(b) The commissioner of health and human services.

(c) Health care consumers.

(d) Health care providers.

(e) Health insurers.

(f) The New Hampshire Health Information Management Association.

(g) The New Hampshire Hospital Association.

(h) Property and casualty insurers.

III. Members of the committee shall receive mileage at the legislative rate when attending to the duties of the committee.

3 Duties.

I. The committee shall study the need for standards to protect health information privacy .

II. The committee shall consider existing proposals that set standards for the protection of health information privacy, including, but not limited to:

(a) The Health Information Privacy Model Act established by the National Association of Insurance Commissioners.

(b) Recommendations developed by the United States Department of Health and Human Services on Privacy of Medical Information.

4 Chairperson; Quorum. The members of the study committee shall elect a chairperson from among the members. The first meeting of the committee shall be called by the first-named senate

member. The first meeting of the committee shall be held within 45 days of the effective date of this section. Four members of the committee shall constitute a quorum.

5 Report. The committee shall make an interim report on its findings together with any recommendations for proposed legislation to the senate president, the speaker of the house of representatives, the senate clerk, the house clerk, the governor, and the state library on or before November 1, 2000 and shall make a final report on or before November 1, 2001.

6 Effective Date. This act shall take effect upon its passage.

Speakers

SIGN UP SHEET

To Register Opinion If Not Speaking

Bill # SB 369 Date 4-11-00

Committee Commerce

**** Please Print All Information ****

Name	Address	Phone	Representing	(check one) Pro	Con
Tony Juliano	125 AIRPORT RD. CONCORD	225-0900	NHAHU	X	
GREGORY SMITH	15 N. MAIN ST, CONCORD	226-0400	NH Psychology Assn	X	
Lisa McGunnigle	125 Airport Rd, Concord	225-0900	NH Hosp Assoc	X	

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON SB 369

BILL TITLE: establishing a committee to conduct a study on the need for standards to protect health information privacy.

DATE: April 11, 2000

LOB ROOM: 302 **Time Public Hearing Called to Order:** 10 AM

Time Adjourned: 10:30 AM

(please circle if present)

Committee Members: Reps. (Hunt), (Francoeur), (Herman), Tsiros, Belanger, McGough, Kenney, (Langley), Pappas, (Avery), (Dalianis), DiFruscia, (Marshall), M. Clark, Crosby, (R. Russell), T. Reardon, Vachon, Taylor, Curran, (Garrish) and (Keye).

Bill Sponsors: Sen. Wheeler, Reps. Fuller Clark and Taylor

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen. Wheeler – Sponsor. Supports.

Alex Feldvebel, Dept. of Insurance – Supports. We need to study on the needs for standards to protect health information privacy. The federal government has not acted on these concerns as yet. Good reason for us to move forward. Balancing act for the good of all concerned.

Q: Rep. Herman – How does this differ from financial information?

A: Don't know but feels that health information should be separate.

Q: Rep. Hunt – Can't the insurance department do this without legislation?

A: Feels that is important to involve legislators, but yes, they can.

Rep. Hunt – Concerns with reality check on whether legislators would show up to do the work by November 1. Five senators probably would not show.

Janet Monahan, NH Medical Society – Sales reps can have access to pharmaceutical records. If you were getting antibiotics you probably wouldn't want that information outside the doctor's office. Insurance companies have access to personal medical files.

Rep. Fuller Clark – Co-sponsor. Supports complex delicate issue. Feels that it does need study. The longer we put this off the more info will have to be collected later. We are looking at model legislation and we could see how it would play in New Hampshire.

Q: Rep. Francoeur – Should the Department come forward with some suggested legislation next year, rather than do some study that would be due Nov. 2001?

A:Yes. We should expedite the process.

Respectfully Submitted:

Stephen G. Avery, Clerk

HOUSE COMMITTEE ON COMMERCE

PUBLIC HEARING ON SB 369

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Committee Members: Reps. Hunt, Herman, Tsiros, Belanger, Francoeur, McGough, Pappas, Avery, Kenny, Langley, Dalianis, DiFruscia, Marshall, M. Clark, Crosby, Russell, T. Reardon, Vachon, Garrish, Taylor, Curran and Keye.

Bill Sponsors: Sen. Wheeler, Rep. M. Fuller Clark and Rep. Taylor

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Sen Wheeler - Sponsor - Supports

Alex Feldvebel - Dept. of Insurance - Supports
We need to study on the needs for standards to protect health information privacy. The Federal Government has not acted on these concerns as yet. Good reason for us to move forward. Balancing Act for the good of all concerned.

Rep. Herman Q - How does this different from financial information. A Don't know but feels that health info should be seperate.

SB 369

Continued.

Rep. Hunt. Q. Can't the insurance department do this without legislation. A. Feels that is important to involve legislatures, but yes they can.

Rep. Hunt. Concerns with reality check on weather legislatures would show up to do the work by November 1. 5 Senators probable would not show.

Alex feels that NH would want to go beyond Federal Regulations, but have standards that were consistants with other States.

Janet Monahan - NH Medical Society - Supports the bill. - Sales Reps can have access to pharmicutical records.

If you are getting antibiotics you probably wouldn't want that information outside the doctors office.

Insurance Companies have access to personnal medical files

Rep Martha Fuller Clark - Co-Sponsor - Supports Complex delicate issue. Feels that it does need study. The longer we put this off the more info will have to be collected later.

SB 369

Rep. MF Clark. we are looking at model legislation and we could see how it would play in New Hampshire.
Rep Francoeur ? Q
Should the department come forward with some suggested legislation next year. Rather than do some studies that would be due in Nov. 2001.
(A) Yes. we should expedite the process.

Sub-Committee Actions

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 369

BILL TITLE: establishing a committee to conduct a study on the need for standards to protect health information privacy.

DATE: April 19, 2000

Subcommittee Members: Reps. Francoeur, Avery and Garrish

Comments and Recommendations: Alex Feldvebel from the NH Insurance Dept. stated that the department will adopt standards based on the NAIC model and send them out for written comment, collect the data and incorporate and review for legislation next session.

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Avery

Seconded by Rep. Garrish

Vote: Unanimous

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep. Sheila T. Francoeur
Subcommittee Chairman/Clerk

HOUSE COMMITTEE ON COMMERCE

SUBCOMMITTEE WORK SESSION ON SB 369

BILL TITLE: **establishing a committee to conduct a study on the need for standards to protect health information privacy.**

DATE: ~~(Type DATE here)~~ April 19, 2000

Subcommittee Members: Reps. Francoeur, Avery, Jarvis

Comments and Recommendations:

Atty Feldbrel from the Ins. department stated that the dept will adopt standards based on the NAIC model - send them out for written comment, collect the data & incorporate & review for legislation next session.

Amendments:

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, (ITL), Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Avery

Seconded by Rep. Jarvis

Vote: Unanimous

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

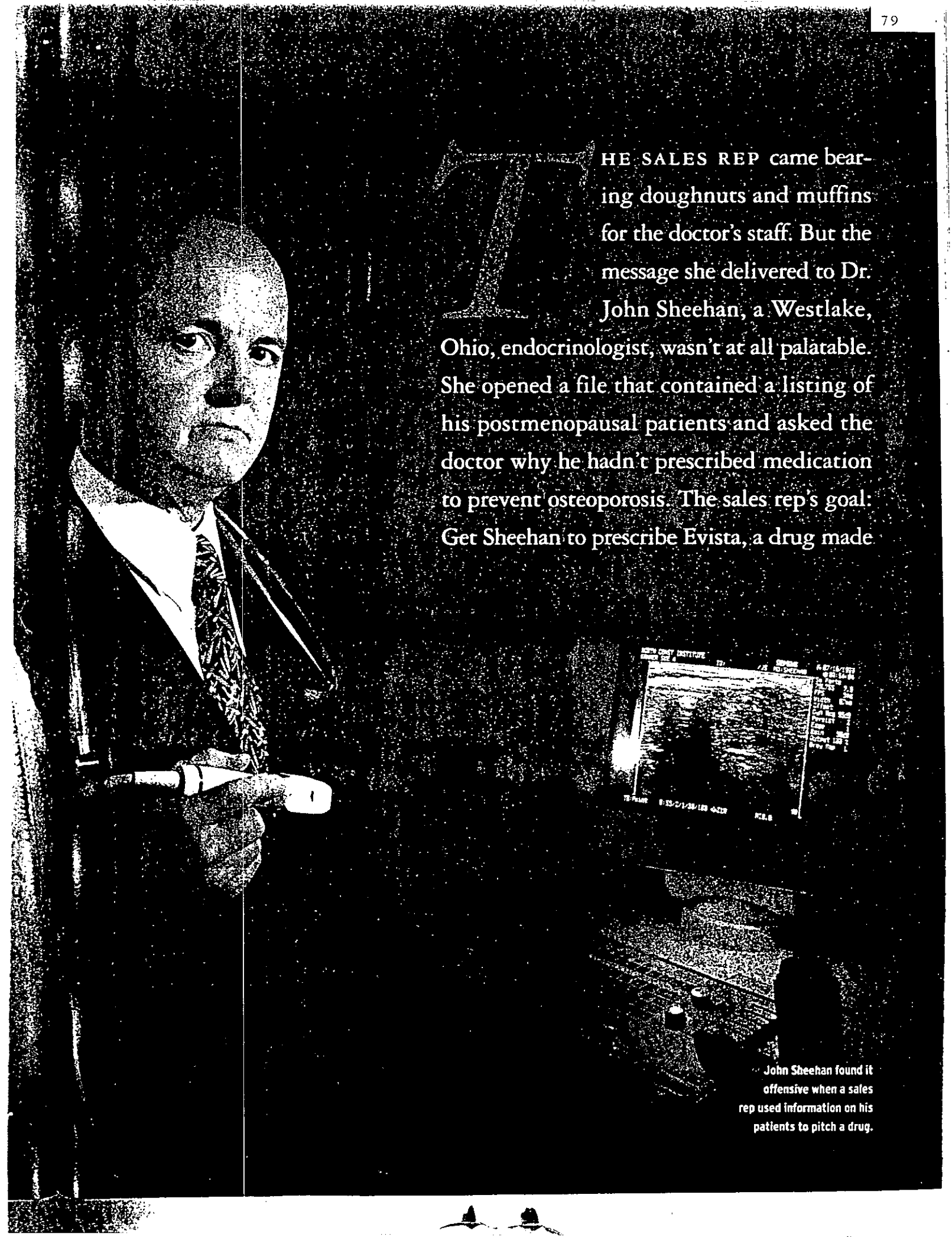
Seconded by Rep. _____

Vote: _____

Respectfully submitted,

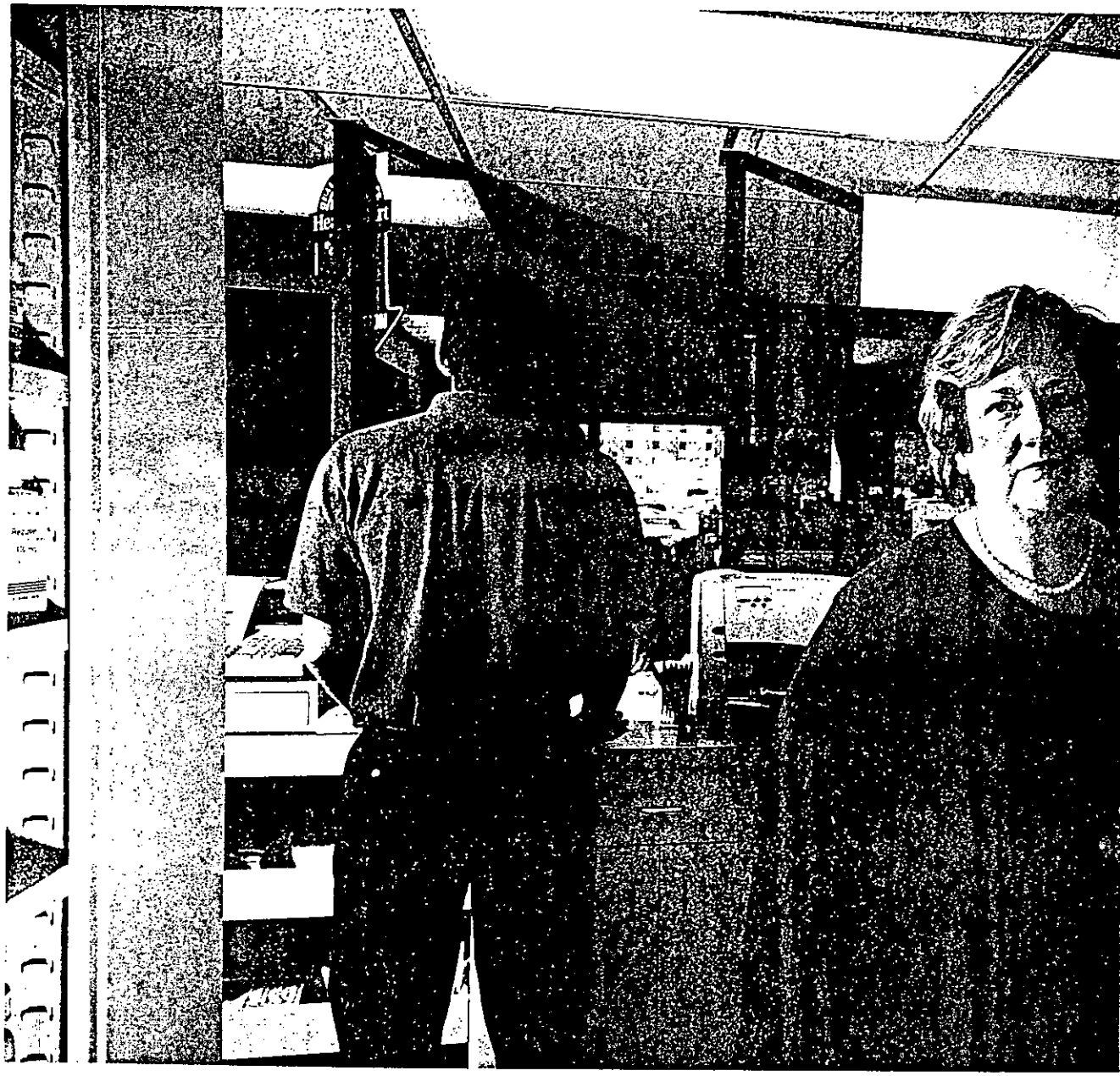
Rep. [signature]

Testimony



THE SALES REP came bearing doughnuts and muffins for the doctor's staff. But the message she delivered to Dr. John Sheehan, a Westlake, Ohio, endocrinologist, wasn't at all palatable. She opened a file that contained a listing of his postmenopausal patients and asked the doctor why he hadn't prescribed medication to prevent osteoporosis. The sales rep's goal: Get Sheehan to prescribe Evista, a drug made

John Sheehan found it offensive when a sales rep used information on his patients to pitch a drug.



by Eli Lilly, her firm's parent company.

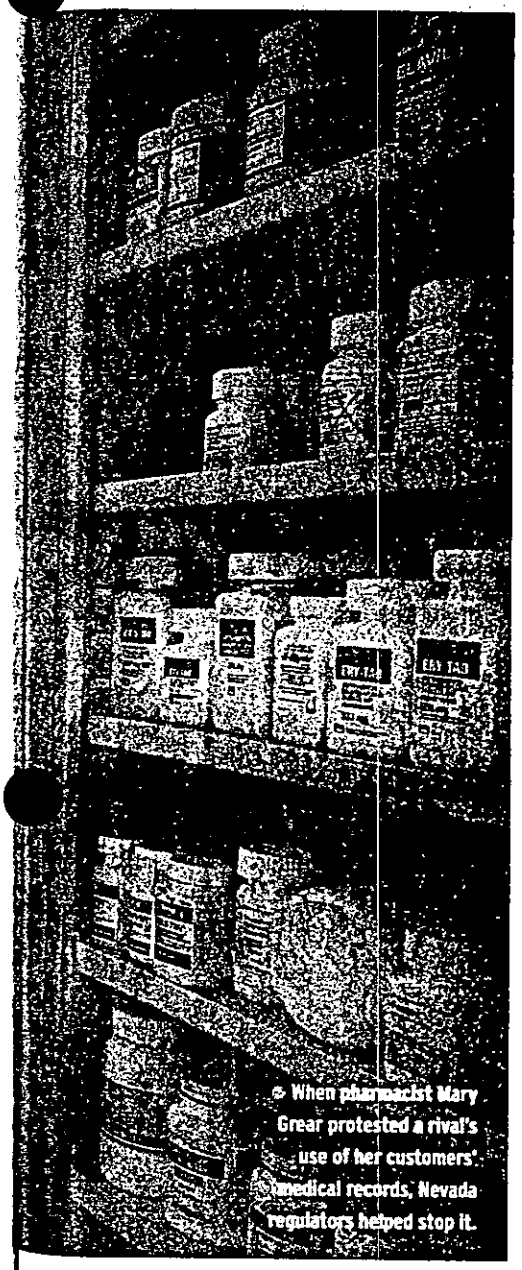
Shocked that an outsider would have access to his patients' records, and the audacity to question his medical judgment, Sheehan promptly sent the sales rep packing. "In my 25 years of practice, I had never experienced anything like that before," says Sheehan. "It was totally offensive."

Offensive, perhaps, but not unusual. While patients and doctors may assume their relationship is confidential, drug companies, insurers, employers and other outsiders know more about you and your medical history than you think.

Sometimes this knowledge can be annoying, as in the case of a drugstore that uses information on customers to sell you a particular medication or woo you away from your current pharmacy. Sometimes it can be embarrassing, as when your employer finds out that you're being treated for a particular medical condition.

But loss of confidentiality is more serious if it deters you from seeking health care. "If you eliminate privacy, you eliminate psychotherapy," says Jim Pyles, a lobbyist on behalf of the American Psychoanalytic Association. "Patients won't make disclosures unless they feel there is a confidential relationship with the physician." Privacy advocates worry that, taken to extremes, loss of confidentiality could cost you your health insurance coverage, your job or the prospect of future employment.

Congress has been wrestling with several broad proposals to safeguard the confidentiality of medical information. "If you have a medical record, you have a privacy problem," says Sen. Patrick



When pharmacist Mary Grear protested a rival's use of her customers' medical records, Nevada regulators helped stop it.

Leahy (D–Vt.), who is sponsoring one of the bills. But chances of passage appear slim. Meanwhile, like Sheehan, you may be surprised at how far afield your medical history can go.

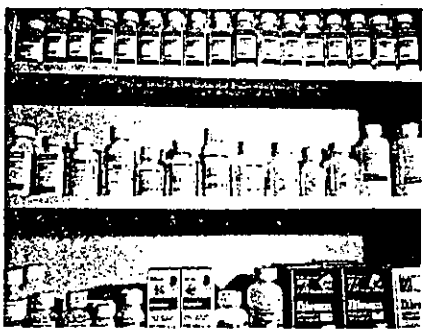
Sheehan discovered that it's easy for drug manufacturers to get patient information. In his case, the sales representative was from PCS Health Systems, one of the largest firms in pharmaceutical benefit management (PBM). Insurers hire PBM companies to administer the prescription-benefit portion of health insurance plans because it's cost-effective. But because PBMs approve every drug a patient buys, they have access to an enormous amount of patient data. And there's no prohibition against a PBM sharing your information or selling it to drug manufacturers, researchers, marketers and other interested parties.

In fact, many PBMs are owned by drugstore chains or drug manufacturers. At the time of Sheehan's rude awakening in June 1998, PCS was owned by Eli Lilly, which has since sold it to Rite Aid. A company spokesman says PCS doesn't share patient data with Rite Aid, but there's no federal law that specifically prevents it.

In fact, Rx America, a PBM based in Utah, used patient data to solicit business for its owner, American Drug Stores. In 1997 American Drug Stores sent coupons and solicitation letters to customers of Health Mart, an independent drugstore chain in Las Vegas, suggesting that they switch to Sav-on, a local chain owned by American Drug Stores. Health Mart owner and pharmacist Mary Grear became suspicious when many of her customers received solicitations. When Grear investigated, she discovered that all of the customers were covered by an insurance company that used Rx America, the PBM owned by American Drug Stores.

Grear raised the issue with the Nevada Board of Pharmacy, which agreed that the practice was unethical, and Sav-on agreed to stop the mailings. But without a federal statute outlawing the practice, there's lots of incentive for firms to continue to do it. "There's so much going on with the sale of prescription information," says Grear. "It's become a very valuable commodity."

There's also nothing to stop PBMs from offering pharmacists incentives to suggest to customers that they switch to certain drugs. When a prescription is filled, the pharmacist sends a request by computer to the PBM to have it approved by the insurance company. If the medication is a brand name that isn't on the insurer's list of preferred drugs, the PBM may reply with an offer of a cheaper generic alternative or another brand-name drug that *is* on the insurer's preferred list.



The loss of privacy could cost you your insurance, your work, or the prospect of a job.

In many cases, however, the insurance company will pay for either brand-name drug. The pharmacist has the option of filling the original prescription, or getting the patient's permission to call his or her doctor and ask about switching. PCS offers pharmacists a commission of up to $12 per prescription if the prescription is changed. PCS spokesman Blair Jackson says the company is compensating pharmacists for their time. And sometimes PBMs are simply trying to save insurance companies money. But some in the pharmaceuticals industry question the practice, especially when a PBM is owned by a drug manufacturer.

Jeopardy on the job

PBMs AREN'T the only leak through which private medical information can become public without a patient's knowledge. Employers who self-insure not only have access to employee medical records so they can process claims, they technically own those records. And even when employers don't self-insure, "if they're paying for your coverage, the insurer

considers the *employer* the customer, not the patient," says Zoe Hudson, a policy analyst with the Health Privacy Project at Georgetown University, in Washington, D.C. "If employers ask for something, they're likely to get it."

Sometimes insurers automatically send copies of benefit claims, complete with diagnoses and treatment plans, directly to an employer. Or if an employer asks why its costs are rising, an insurer may disclose that certain employees are undergoing expensive treatments for AIDS or cancer.

No federal law specifically bars employers from using medical records when making decisions about promotions, hiring and firing. A study published in the *Employment Rights and Employment Policy Journal* reported that 35% of the largest employers in the U.S. consider medical information when making employment decisions.

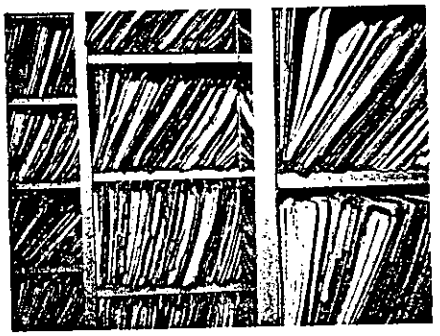
In one case, an administrative assistant at an international machinery firm mentioned in casual conversation with two co-workers that ten years earlier she had been exposed to hepatitis, although she had never become ill. When the conversation was reported to the company's director of human resources, the woman agreed to allow the company to perform a blood test but refused to sign a blanket medical release. As a result, she was suspended for three days.

Reinstated after the test proved negative, the woman was nevertheless embarrassed when she was asked to wear rubber gloves while serving food at meetings and told not to come in contact with the company president's secretary. She eventually left her job for another, taking a pay cut in the process.

Other conduits

INSURANCE COMPANIES can share your private medical information with lots of outside organizations, some of which you may not even know exist.

■ **Disease managers.** These firms are hired by insurance companies to monitor patients who have a specific condition, such as diabetes, asthma or congestive heart failure, and make sure they're following the prescribed treatment plan. Disease-management firms aren't required by law to keep patient medical histories confidential.



No federal law prohibits the sharing or selling of a patient's medical records.

■ **Accrediting organizations.** While conducting a routine review, an outside managed-care accrediting organization may ask to survey an insurance plan's patients. In response, the insurer may release hundreds of patient records.

"The problem is that whoever holds the information at any moment in time, whether it's the insurer or the pharmacy or the PBM, thinks that it's the owner of the information," says Hudson.

Even doctors can be unwittingly sloppy about keeping their patients' records confidential. Consider a physician who has contracts with several managed-care health insurance companies. To obtain a contract, the doctor may have had to agree to allow the plan to review all of his records—even those of patients not in that plan—to make sure the standard of care is consistent.

The goal may be worthwhile, but such reviews are done without the knowledge of patients. And not every physician goes along with the practice. Dr. Stephen Ducey, an internist in New London, Conn., refused to reveal his records to a representative of Physicians Health Service (PHS), a Connecticut-based insurance company. Instead, Ducey was willing to disclose only the records of PHS patients who had actually signed releases.

When one of Dr. Margo Goldman's psychotherapy patients applied for long-term-care insurance, the insurer hired a medical clearinghouse to review the patient's medical history. The clearinghouse immediately demanded that Goldman fax the patient's entire record. "This did not seem necessary or appropriate, given that they were evaluating him for long-term-care coverage," says Goldman, a psychiatrist in the Boston area. She persuaded the clearinghouse to accept a clinical summary instead.

Goldman is sensitive to confidentiality issues because she is director of policy development for the National Coalition for Patient Rights, but not all physicians are so vigilant. "If a physician found it more expedient, or just wasn't thinking about privacy, it would be easy to imagine that he would just fax the whole record," says Goldman.

Right now there's not much you can do to ensure the privacy of your medical records. State laws cover various slices of medical privacy, but no federal statute prohibits the sharing or selling of medical information without the patient's consent. Even paying out of pocket won't protect you because your records may still be reviewed by outside insurance companies or other organizations if your doctor is a member of a managed-care plan.

The Department of Health and Human Services is working on final rules to safeguard the privacy of electronic medical records stored or transmitted by computer. But those rules won't take effect until 2002, and the bulk of medical records is still on paper. "If you give the public the impression that communications can't remain private, then the public loses confidence in the health care delivery system," says lobbyist Pyles. K —*Reporter:* **JUSTIN WISER**

Voting Sheets

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on SB 369

BILL TITLE: **establishing a committee to conduct a study on the need for standards to protect health information privacy.**

DATE: April 27, 2000

LOB ROOM: 302

Amendments:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Motions: OTP, OTP/A, (ITL,) Re-Refer, Interim Study (Please circle one.)

Moved by Rep. Francoeur

Seconded by Rep. Avery

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote: (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0/Yes

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stephen G. Avery, Clerk

Stephen G. Avery

HOUSE COMMITTEE ON COMMERCE

EXECUTIVE SESSION on SB 369

BILL TITLE: **establishing a committee to conduct a study on the need for standards to protect health information privacy.**

DATE: 4.27.00

LOB ROOM: 302

Amendments:

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Sponsor: Rep. _____ OLS Document #: _____ Adopted/Failed

Motions: OTP, OTP/A, (ITL) Re-Refer, Interim Study (Please circle one.)

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Seconded by Rep. Avery.

Vote: 13-0 (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Re-Refer, Interim Study (Please circle one.)

Moved by Rep. _____

Seconded by Rep. _____

Vote: _____ (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE: 13-0

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Stephen G. Avery, Clerk

OFFICE OF THE HOUSE CLERK

2000 SESSION

COMMERCE

Bill #: SB 369 Title: Health Care Privacies Study Committee

PH Date: ___/___/___ Exec Session Date: 4/27/00

Motion: ITL Amendment #:

MEMBER	YEAS	NAYS
Hunt, John B, Chairman		
Francoeur, Sheila T, V Chairman	✓	
Herman, Keith R		
Tsiros, William B		
Belanger, Ronald J		
McGough, Tim S	✓	
Avery, Stephen G, Clerk	✓	
Kenney, Joseph D	✓	
Langley, Jane S	✓	
Pappas, Marc P		
Dalianis, Griffin T	✓	
DiFruscia, Anthony R		
Marshall, Gene B	✓	
Clark, Martha Fuller	✓	
Crosby, Toni M		
Russell, Ronald G	✓	
Reardon, Tara G	✓	
Vachon, Dennis P		
Taylor, Kathleen N	✓	
Curran, James C		
Garrish, Linda L	✓	
Keye, Harvey	✓	
TOTAL VOTE:	13	0

Printed: 12/30/1999

Committee Report

COMMITTEE REPORT

COMMITTEE: **Commerce**

BILL NUMBER: **SB 369**

TITLE: establishing a committee to conduct a study on the need for standards to protect health information privacy.

DATE: April 27, 2000 CONSENT CALENDAR YES ☒ NO ☐

☐ OUGHT TO PASS

☐ OUGHT TO PASS WITH AMENDMENT

☒ INEXPEDIENT TO LEGISLATE

☐ RE-REFER

☐ REFER TO COMMITTEE FOR INTERIM STUDY
(Available only in second year of biennium.)

STATEMENT OF INTENT
(Include Committee Vote)

This bill would have established a committee to study the need for standards to protect health information privacy. The committee instructed the Insurance Department to draft a set of standards based on the NAIC model and circulate to all the appropriate agencies, as well as members of the Commerce Committee for comment. After review, the department will recommend legislation for next session.

Vote 13-0.

Rep. Sheila T. Francoeur
FOR THE COMMITTEE

Original: House Clerk
cc: Committee Bill file

USE ANOTHER REPORT FOR MINORITY REPORT

CONSENT CALENDAR

Commerce

SB 369, establishing a committee to conduct a study on the need for standards to protect health information privacy. INEXPEDIENT TO LEGISLATE

Rep. Sheila T. Francoeur for Commerce: This bill would have established a committee to study the need for standards to protect health information privacy. The committee instructed the Insurance Department to draft a set of standards based on the NAIC model and circulate to all the appropriate agencies, as well as members of the Commerce Committee for comment. After review, the department will recommend legislation for next session. Vote 13-0.