

Protect Confidentiality In Health Insurer Communications

Sen. Spilka (S.557) & Rep. Hogan (H.871)

An Act to Protect Access to Confidential Healthcare would establish mechanisms to ensure that when multiple people are on the same insurance plan, confidential health care information is not shared with anyone other than the patient.

Confidentiality is Essential

Patient confidentiality is an essential aspect of the patient-provider relationship. Without confidentiality, patients are understandably reluctant to communicate openly with their health care providers and may delay or forgo accessing needed care, especially if they fear being stigmatized or harmed as a result.

Unintended Breaches Are Common

Health insurers routinely send out an Explanation of Benefits (EOB), detailing the type and cost of medical services received, to the primary subscriber each time an enrollee on the plan accesses care. Sensitive health information is frequently disclosed in an EOB, violating the basic right to privacy for anyone enrolled as a dependent on another's policy, such as a young adult, minor or spouse. Therefore, health insurers must help prioritize and protect patient privacy in all communications.

Repercussions Reported: Forgone Treatment, Risk of Abuse, Higher Costs

- Young adults and mature minors are particularly **likely to be deterred from seeking care for sensitive services** when worried their parents will find out.
- Disclosure to an abusive partner or family member can **worsen violence or abuse**.
- Delayed or foregone treatment **results in health problems and higher costs** down the road.
- Privately insured individuals often utilize publically-funded community clinics instead of their private insurance because **they are afraid that care obtained under their insurance policy will not be confidential**. This **burdens community clinics** that are already facing a shortage of funding and shifts costs to publicly funded programs.

Disclosing confidential health information negatively affects *all* people, but especially:

- **Adult spouses** covered as dependents on a partner's plan, *especially when the partner is abusive or coercive*
- **Young adults (ages 18-26)** insured as dependents on their parents' plan
- **Mature minors** exercising their right to independently access certain protected confidential health care services

Patient & provider testimony in MA:

'The problem isn't that people are uninsured. It's that they are too scared to take advantage of their benefits. Frequently patients with private insurance are afraid to actually access health care because there is no guarantee that an EOB will not be sent home.'

'I am still covered under my parents' insurance but did not want them to know about a series of mental health counseling appointments. Although insurance covered them, my mother received notification even though I don't live at home. She was distraught which is exactly what I wanted to avoid.'

'Explanation of benefits summaries are routinely sent to my husband, instead of to me directly.'

"At the domestic violence program at Boston Medical Center, clients forgo services because the insurance notifications might alert abusers to their whereabouts or enrage them... Transparency is great, but it shouldn't compromise privacy, or safety. For too many people, those slips of paper are much more than ways to keep track of health costs. They're toxic."

Yvonne Abraham, "Ensuring Privacy in the Mailbox" *Boston Globe*, January 25, 2015

How This Bill Will Protect Confidentiality

- ✓ Insurers would send ‘member-level’ EOBs to each individual insured dependent, rather than to the primary subscriber.
- ✓ Insurers would allow patients to choose their preferred method of receiving EOBs, including at an alternate address or through HIPAA-compliant electronic means.
- ✓ EOBs would not be issued when no remaining balance exists on a claim, and therefore would never be sent for preventive health services with no cost sharing (e.g. a birth control refill visit, STI test or domestic violence counseling).
- ✓ EOBs would provide generic information only, such as “office visit” or “medical care” rather than more explicit descriptions that could be used against patients.
- ✓ Patients would have the option to opt-out of receiving an EOB only if disclosure of confidential health information could compromise safety or access to health services.
- ✓ Patients would be clearly informed of their options to request confidential means of receiving EOBs.
- ✓ The Division of Insurance and Department of Public Health would educate providers and patients on these protections.

Please join our efforts to ensure that all individuals in Massachusetts are able to access health care confidentially and receive the services they need.

For more information contact Alyssa Vangeli at avangeli@hcfama.org

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ACLU of Massachusetts
Association for Behavioral Healthcare
Boston Alliance of GLBT Youth
Boston Area Rape Crisis Center
Boston Children’s Hospital, Division of Adolescent/Young Adult Medicine
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MA Association for School-Based Health Centers
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MA Family Planning Association
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