

**CHAPTER NO. 769**

**SENATE BILL NO. 3219**

**By McNally, Kurita**

Substituted for: House Bill No. 3220

By Caldwell

AN ACT To amend Tennessee Code Annotated, Title 50 and Title 56, relative to sale or marketing of information.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 56, Chapter 7, Part 1, is amended by adding the following as a new section.

( ) (a) (1) It is unlawful for an insurer or carrier that provides accident or health insurance; a nonprofit hospital or medical service corporation; a health, hospital or medical service corporation; a health maintenance organization, including any that participates in the TennCare or any successor program; a M.E.W.A.; preferred provider organization, pharmacy benefit management organization, or other network providing health benefits to market or sell information that directly identifies the patient who is the subject of the information and that relates to the physical or mental health of that patient or to the provision of health care to that patient, unless the patient has authorized the release in written, electronic or such other form as indicates the patient's consent.

(2)(A) This section does not apply to:

(i) the release of such information to an agent, contractor or corporate affiliate of the entity holding the information to perform a permitted function or use of the information; or

(ii) the release of information for which the patient, enrollee or insured has executed a voluntary waiver or release.

(B) This section does not apply to release of information that does not readily identify the patient for bona fide research or audit purposes. Nothing in this section shall prohibit:

(i) the transfer of information as part of arrangements to assure the delivery of health care, health care payment, health care management, disease state management, health care oversight; or

(ii) the transfer of responsibility for identifiable health information to a successor in interest; or

(iii) the release of medical information, medical services utilization data and any other necessary patient identifying information by an insurer or carrier that provides accident or health insurance; a nonprofit hospital or medical service corporation; a health, hospital

or medical service corporation; a health maintenance organization, including any that participates in the TennCare or any successor program; a M.E.W.A.; or a pharmacy benefit management organization to the TennCare Bureau or its contractors or other appropriate state agencies, appropriate providers of medical services, outreach workers, researchers, outside vendors or contractors, universities or any other appropriate third parties for the purpose of performing case management, drug utilization review (DUR), disease management, quality reviews, health management, or outcomes research that is designed to monitor utilization patterns, improve the quality of health care and health care delivery, assure compliance, control fraud, waste and abuse or contain costs. Any third party vendor or contractor, as well as any other entity that gains access to this information to perform the analysis and intervention activities described above, will be bound to comply with all applicable state and federal laws and regulations regarding vigilant protection of such confidential information.

(3) Violation of this subsection shall be punished as a Class C misdemeanor.

(b) In lieu of, or in addition to, any other remedy that may be available under this title, the commissioner may assess a civil penalty against any entity violating this act in an amount not to exceed one thousand dollars (\$1,000) for each separate violation, or the amount realized by the entity, whichever is greater. Such civil penalty shall only be levied by the Department of Commerce and Insurance after a hearing, conducted pursuant to the Uniform Administrative Procedures Act, codified at Tennessee Code Annotated, Title 4, Chapter 5. In any civil action brought to enforce this provision, costs for the prevailing party, including the department, shall include reasonable expenses, including attorney fees.

(c) The commissioner is authorized to promulgate rules and regulations pursuant to the Uniform Administrative Procedures Act, Title 4, Chapter 5, to enforce the provisions of this section.

(d) Nothing in this section shall be construed to prohibit an insurer, a hospital and medical service corporation, a health maintenance organization or an employer from sharing or using consumer information with its affiliates, subsidiaries, agents or joint venture partners, for activities consistent with Title 56 of the Tennessee Code Annotated, including but not limited to, data processing, utilization review, underwriting claims and anti-fraud purposes. An insurer shall be permitted to share personal information such as name, address and other non-medical specific data with subsidiaries, agents, or joint venture partners.

SECTION 2. Tennessee Code Annotated, Title 50, Chapter 1, Part 3, is amended by adding the following as an appropriately designated section:

(a) It is unlawful for any employer, or an agent, contractor or employee of an employer, to market or sell medical information that directly identifies an employee, unless the patient has authorized the release in written, electronic or

such other form as indicates the patient's consent, including records for medical services provided or paid for by the employer for purposes unrelated to:

- (1) the provision of health care to the employee or family members receiving health insurance;
- (2) payment for health care to the employee or family members receiving health insurance;
- (3) administration of any health plan or program offered by the plan.

For purposes of this section, medical information shall include lists of employees or family members receiving health insurance. Medical information shall not include information that does not identify the patient. This section shall not apply to information for which the employee or family member has executed a voluntary waiver or release.

(b) Violation of this section shall be punished as a Class C misdemeanor.

SECTION 3. The provisions of this act shall only take effect to the extent permitted by federal law [including, but not limited to, the Employee Retirement Income Security Act of 1974 (ERISA)] and to the extent that any necessary approvals under the federal waiver for TennCare (or a successor entity or program) have been secured from the federal Health Care Financing Administration.

SECTION 4. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end, the provisions of this act are declared to be severable.

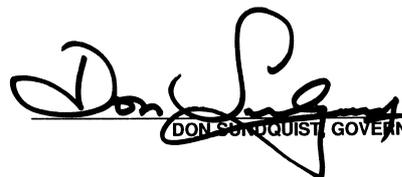
SECTION 5. This act shall take effect upon becoming law, the public welfare requiring it.

**PASSED: May 11, 2000**

  
JOHN S. WILDER  
SPEAKER OF THE SENATE

  
JIMMY NAIFEH, SPEAKER  
HOUSE OF REPRESENTATIVES

**APPROVED this 22<sup>nd</sup> day of May 2000**

  
DON SUNDQUIST, GOVERNOR