

HB 1330-FN – AS AMENDED BY THE HOUSE

5Mar2014... 0606h

2014 SESSION

14-2538
10/01

HOUSE BILL ***1330-FN***

AN ACT relative to the protection from disclosure of privileged individual medical records.

SPONSORS: Rep. Kurk, Hills 2

COMMITTEE: Criminal Justice and Public Safety

AMENDED ANALYSIS

This bill prohibits the disclosure to the state of medical information contained in an individual's medical records except by search warrant, unless the individual consents or disclosure is required by law. The bill also limits the inspection authority of records under the controlled drug act to the purpose of enforcement of the controlled drug act only.

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 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

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STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Fourteen

AN ACT relative to the protection from disclosure of privileged individual medical records.

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

1 1 New Section; Medical Records; Right to Privacy; Protection From Disclosure to the State.

2 Amend RSA 332-I by inserting after section 4 the following new section:

3 332-I:4-a Medical Records; Right to Privacy; Protection from Disclosure to the State.

4 I. A patient has a right to privacy in his or her medical records. All medical information
5 contained in individual patient medical records shall be confidential and privileged and shall be
6 subject to disclosure to the state, its agencies, or its political subdivisions by search warrant only.

7 II. A search warrant for access to medical records shall order a hospital, medical provider, or
8 any other holder of such records to comply within a reasonable time by producing such portion of the
9 records as the search warrant may specify under seal for in camera review by a judge. The patient
10 shall be provided notice that such records were produced and shall be given an opportunity to object
11 to their disclosure in full or in part. Whether or not the patient objects, the state, its agencies, or its
12 political subdivision must prove:

13 (a) That the information sought is unavailable from another source;

14 (b) That there is a compelling justification for its disclosure; and

15 (c) That no more of the patient's medical record than is absolutely essential shall be
16 disclosed.

17 III.(a) A search warrant shall not be required, and this section shall not apply, where the
18 patient affirmatively consents to disclosure.

19 (b) This section shall not apply to:

20 (1) Health oversight entities under federal law in furtherance of their oversight
21 responsibilities; and

22 (2) Access to medical records specifically authorized by state law.

23 IV. The provisions of RSA 329:26 shall apply to this section.

24 2 Controlled Drug Act; Authority for Inspection; Purpose. Amend RSA 318-B:25 to read as
25 follows:

26 318-B:25 Authority for Inspection. All officers, agents, inspectors, and representatives of the
27 department of health and human services who are charged with the responsibility to enforce this
28 chapter; all officers, agents, inspectors, and representatives of the pharmacy board who are charged
29 with the responsibility to enforce this chapter; all peace officers within the state **who are charged**
30 **with the responsibility to enforce this chapter**; the attorney general and all county attorneys

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- Page 2 -

1 *who are charged with the responsibility to enforce this chapter*; and federal, state, county, and
2 municipal law enforcement officers *who are charged with the responsibility to enforce this*
3 *chapter*, are authorized to enter during normal business hours upon the premises used by a
4 practitioner for the purpose of his *or her* practice and to inspect such original records or
5 prescriptions or both for controlled drugs as defined herein *for the purpose of enforcing this*
6 *chapter only*. Every practitioner, his *or her* clerk, agent, or servant shall exhibit to such person on
7 demand every such original record or prescription or both so kept on file.

8 3 Effective Date. This act shall take effect July 1, 2014.

HB 1330-FN - FISCAL NOTE

AN ACT prohibiting the disclosure by search warrant of privileged individual medical records.

FISCAL IMPACT:

The Judicial Branch and Department of Justice state this bill, **as introduced**, may increase state expenditures by an indeterminable amount in FY 2015 and each year thereafter. There is no impact on county and local expenditures, or state, county and local revenue.

METHODOLOGY:

The Judicial Branch states this bill adds RSA 332-I:4-a to prohibit the discovery or subpoena of privileged individual medical records. The Branch states the bill does not add any new cases or take away cases, however it could add difficult evidentiary issues to cases. This might result in longer trials and increase the potential for appeals for the resolution of the issues that would arise from the proposed bill. Any increase in expenditures cannot be determined.

The Department of Justice states this bill may have an impact on litigation involving the State in which the medical condition of an individual is at issue. The Department has no data to determine the exact fiscal impact on any potential increase in state expenditures.