

**SENATE BILL NO. 2399**

Introduced by

Senators O'Connell, Fairfield

1 A BILL for an Act to provide for privacy of health information; and to create and enact a new  
2 section to chapter 43-15 of the North Dakota Century Code, relating to privacy of information  
3 received by pharmacists.

4 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

5 **SECTION 1. Disclosure of individually identifiable health information for**  
6 **marketing purposes.**

- 7 1. As used in this section, unless the context otherwise requires:
- 8 a. "Health care oversight agency", "individually identifiable health information",  
9 and "research" have the same meanings as provided under title 45, Code of  
10 Federal Regulations, part 164, section 501.
- 11 b. "Health care provider" and "health plan" have the same meanings as provided  
12 under title 45, Code of Federal Regulations, part 160, section 103.
- 13 c. "Marketing" means to make a communication about a product or service to  
14 encourage a recipient of the communication to purchase or use the product or  
15 service. The term does not include communications made as part of the  
16 treatment of a patient for the purpose of furthering treatment unless the health  
17 care provider receives direct or indirect remuneration from a third party for  
18 making the communication.
- 19 2. Except as provided under subsection 3, a health care provider, a pharmacy, a  
20 health researcher, a health plan, a health oversight agency, a public health  
21 authority, an employer, a health or life insurer, or a school or university may not  
22 disclose individually identifiable health information to any person for marketing the  
23 products or services of that person and may not use individually identifiable health

1 information in that health care entity's possession to provide marketing services to  
2 any person.

3 3. A health care provider, a pharmacy, a person conducting health research, a health  
4 plan, a health oversight agency, a public health authority, an employer, a health or  
5 life insurer, or a school or university may provide marketing services to a  
6 pharmaceutical company if that health care entity provides clear and conspicuous  
7 notice to the individual involved concerning the health care entity's disclosure  
8 practices for all individually identifiable health information collected or created with  
9 regard to the individual and obtains the consent of the individual involved to use  
10 the information and that consent is manifested by an affirmative act in a written  
11 communication that only references and applies to the specific marketing purpose  
12 for which the information is to be used.

13 **SECTION 2.** A new section to chapter 43-15 of the North Dakota Century Code is  
14 created and enacted as follows:

15 **Prohibited disclosures.** A pharmacist and any employee of a pharmacy may not  
16 disclose to any third person any information regarding the prescriptive practices of a practitioner  
17 which identifies the practitioner. This section does not limit disclosures within the pharmacy;  
18 between a pharmacist or an employee of a pharmacy and the practitioner or the practitioner's  
19 office staff; consented to by the practitioner; and disclosures otherwise required by law.