



**TESTIMONY OF  
CONNECTICUT HOSPITAL ASSOCIATION  
SUBMITTED TO THE  
JUDICIARY COMMITTEE  
Monday, February 27, 2023**

**HB 6739, An Act Creating A State Cause Of Action For The Unauthorized Disclosure Of Protected Health Information In Violation Of The Federal Health Insurance Portability And Accountability Act**

The Connecticut Hospital Association (CHA) appreciates this opportunity to submit testimony concerning **HB 6739, An Act Creating A State Cause Of Action For The Unauthorized Disclosure Of Protected Health Information In Violation Of The Federal Health Insurance Portability And Accountability Act**. CHA opposes this bill.

Connecticut hospitals continue to meet the challenges posed by the COVID-19 pandemic and are now facing new challenges of treating sicker patients than they saw before the pandemic, with a dedicated but smaller workforce who are exemplary but exhausted. They are also experiencing significant financial hardships brought on by record inflation. Through it all, hospitals have been steadfast, providing high-quality care for everyone who walks through their doors, regardless of ability to pay.

Federal law recognizes the need for adherence to administrative law standards by explicitly stating that HIPAA's enforcement mechanism is confined to government oversight, with no private cause of action available. The fundamental recognition that there is no HIPAA private cause of action has been consistently upheld by countless state and federal courts, based on 42 U.S.C. § 1320d-1 to 42 U.S.C. § 1320d-7. For a regulatory system as complex and confusing as HIPAA, it is essential that administrative processes be the guiding enforcement mechanism.

A very recent Connecticut Supreme Court case<sup>1</sup> made clear that a common law negligence suit for breach of medical confidentiality, using a negligence standard, is a viable claim in Connecticut. Included in the case law is the recognition that HIPAA's federal rule *not supporting private right* of action does not interfere with whether a common law tort claim can be brought for breach of confidentiality. A private negligence action for breaches of confidentiality can be viable claims in Connecticut without broadening the *federal law's dictate that HIPAA cannot be the basis for a private cause of action*.

---

<sup>1</sup> Avery Center for Obstetrics and Gynecology, P.C., 327 Conn. 540 (2018)

A negligence case in Connecticut requires four basic elements: duty, breach, causation, and damages. There is no reason, other than skirting these well-founded elements forming the principles of tort law in Connecticut, to convert the administrative oversight of HIPAA as a regulatory scheme into a *per se* tort.

Unfortunately, the language in HB 6739 tracks an existing law (section 52-571h) that allows for a private right of action in instances where the *crime* of identity theft has been committed. Crimes involve a different level of proof, evidence and quintessentially include intentional actions usually by a person intending to cause harm. Negligently violating HIPAA is not a crime and it should not be elevated to the level of crime.

We appreciate the desire to protect patient rights. But we urge you to reject a misstep that would elevate an alleged negligent failure to meet a complex and often debated regulatory framework to the level of an intentional crime.

Thank you for your consideration of our position. For additional information, contact CHA Government Relations at (203) 294-7310.