



Legislative Testimony
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Written Testimony Supporting House Bill 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

Senator Winfield, Representative Stafstrom, Ranking Members Kissel and Fishbein, and distinguished members of the Judiciary Committee:

My name is Jess Zaccagnino, and I am the policy counsel for the American Civil Liberties Union of Connecticut (ACLU-CT). I am writing to testify in support of House Bill 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.

Medical and genetic information can reveal some of the most personal and private data about us, and maintaining control over that information is crucial. People who are harmed by the unauthorized disclosure of protected health information in violation of the federal Health Insurance Portability and Accountability Act (HIPAA) deserve the ability to recover financially in court, inclusive of costs and reasonable attorney fees. By including coverage of costs and attorney fees, people with less access to the legal system and financial resources will be more likely to find an attorney to represent them.

The ACLU-CT believes in expanding the right to privacy, increasing the control that people have over their personal information, and ensuring that civil liberties are enhanced rather than compromised by technology. Unauthorized disclosure of protected health information is extremely harmful, especially for children, elderly people, and disabled people.

The proliferation of social media over the past two decades has made it easier than ever to disclose sensitive information instantaneously to millions of people. Social media is a common source of privacy breaches. People working in the healthcare industry have frequently been fired or reprimanded for posting videos or pictures of patients without consent. A news investigation found an online EMS Facebook group with 23,000 members, where first responders would post uncensored and gruesome footage of the scenes they encountered at work.¹ There are also documented instances of nursing home workers violating the medical privacy of our elders. For example, a Snapchat video surfaced of two nursing home employees taunting a 91-year-old patient with dementia.² These instances are not unique and instead are pervasive.

But the bounds of HIPAA violations are broader than just social media incidents and include the unauthorized access of health care records, denying patients access to their health records, or otherwise improperly handling a person's protected health information. Fines and penalties for HIPAA violations are astronomical, at times costing hundreds of thousands or millions of dollars.³ But yet, a person is currently unable to pursue an action in state court for financial relief. House Bill 6739 fills an important gap in the law surrounding HIPAA. HIPAA itself does not provide a private right of action for HIPAA violations.⁴ This means that while the government can sue and seek fines, the people who are actually being directly harmed by noncompliance are not accorded that same ability. As such, the ACLU-

¹ Faith Abubey & Lindsey Basye, *Sick and Twisted: EMS Dark Humor Page Exposed*, 11 ALIVE (Nov. 6, 2019), <https://www.11alive.com/article/news/investigations/the-reveal/ems-dark-humor-investigation/85-7170a926-bab2-4f90-8cbb-5dc216a8ea0c>.

² *Outrage After Video Shows Staffers Taunting, Terrorizing Woman, 91, At Glenview Nursing Home*, CBS (Aug. 8, 2019), <https://chicago.cbslocal.com/2019/08/08/glenview-nursing-home-abuse/>.

³ *The Most Common HIPAA Violations You Should Avoid*, HIPAA J. (Jan. 2, 2023), <https://www.hipaajournal.com/common-hipaa-violations/>.

⁴ Michelle Wilcox DeBarge, Jody Erdfarb & Michael Menapace, *The Connecticut Supreme Court Opens Door for Expanded Negligence Liability Based on HIPAA Violations*, WIGGIN & DANA (Dec. 10, 2014), <https://www.wiggin.com/publication/the-connecticut-supreme-court-opens-door-for-expanded-negligence-liability-based-on-hipaa-violations/>.

CT supports this effort to broaden access to the courts and urges this Committee to do the same.