

Sen. Cindy Rosenwald: Mothers in New Hampshire Have Constitutional Right to Privacy; Current Law Disagrees



GRANITE STATERS value their privacy. They value it so highly that, five years ago, voters agreed to put privacy language into the state's constitution, guaranteeing the right to be free from government intrusion in private or personal information.

It is shocking, therefore, and in direct opposition to the desire for privacy in our personal affairs, that we routinely send identified medical information of Granite Staters to the federal government. Yes, you read that right. Identified medical information belonging to New Hampshire residents is sent to the federal government without the consent or knowledge of the individual. And this intrusion in our medical privacy is done with the full knowledge and assistance of New Hampshire's state government through forms that are required to be filled out by both the mother and hospital.

When a woman gives birth in New Hampshire, the hospital or birthing center collects identifiable, confidential health history from the mother and baby's medical records and, without her permission, sends this information to the Division of Vital Records. The Division then sends mother and baby's medical record information, with identifying information about them, to the Centers for Disease Control (CDC). The information includes: when the mother's last period started, if she has a sexually transmitted disease, if she is breastfeeding, if she had fertility treatments, whether it was her husband's sperm — or someone else's sperm — used in cases of artificial insemination, and if it was a vaginal birth. These are only a few of the very personal questions about a mother's medical and social history included in this form.

With more than 12,000 babies born each year in New Hampshire to 12,000 mothers, the state sends the medical records of approximately 25,000 mothers and children to the federal government each year, in violation of our constitutional right to privacy. And it's not only a violation of the New Hampshire constitution; long-standing state law says individuals own the information in their medical records. This transfer of mothers' and babies' medical histories also violates our property rights to our own medical information enumerated under state law.

We should be further concerned about the invasion of privacy and the security of this medical information being released to the Division of Vital Records, as the Division resides within the Secretary of State's office — an entity that is not covered by HIPAA. Therefore, any hacking or breach of this information would not be subject to the investigative, enforcement, or penalty provisions of HIPAA, leaving an individual, whose confidential medical information was wrongly accessed, with no protection whatsoever.

This session, the Legislature had an opportunity to correct this violation of Granite Staters' medical privacy. Senate Bill 105 would have required hospitals and birthing centers to release health data which has been de-identified to the Secretary of State. The Secretary of State would, in turn, share this de-identified health data with the CDC. This would be consistent with our constitutional right to privacy and our legal right to ownership of our medical information.

Sadly, the Legislature blinked when the health community, including our own Department of Health and Human Services, maintained that their own research interests and fear over the possible loss of federal grant money should take precedence over the privacy of New Hampshire residents. They believe that taking information that belongs to individuals without permission is justified because of the good work they do with it. This paternalistic attitude not only devalues the privacy of New Hampshire's women and children, it also ignores our own legal ownership of our medical information and puts the security of this information at great risk.

We must remember that someone's medical information belongs to them, not the hospital, not the doctor, and not the State of New Hampshire. And certainly not the federal government. In the end, it is their constitutional right to be free from governmental intrusion in their private or personal information. It is also their legal right because, under New Hampshire law, their medical history belongs only to them.

During this week marking the 4th of July holiday, a day steeped in the values we hold most dear: freedom, privacy, and respect of our rights, I am confident that if the mothers of New Hampshire were aware of how their privacy is being invaded, they would be outraged just as I am. I promise to continue this fight to protect Granite Staters' constitutional and legal rights to the privacy of their personal and private medical information.

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