

Confidentiality



HLC OUTLOOK: Confidentiality of Patient Information



1001 Pennsylvania Avenue
Suite 550S
Washington, DC 20004
202-452-8700
www.hlc.org

ISSUE

In 1996, Congress directed the Department of Health and Human Services (HHS) to issue regulations governing confidentiality of individuals' health information should Congress fail to enact legislation establishing such protections by August 1999. Because Congress was unsuccessful in passing such legislation, as instructed in the Health Insurance Portability and Accountability Act (HIPAA), HHS issued regulations. Since April 2003, health care providers, plans, and clearinghouses have been subject to the HIPAA privacy standards, which govern the use and disclosure of health information. These regulations strike the appropriate balance between protecting the privacy of a patient's medical information and ensuring that necessary information is available for providing quality health care and conducting vital medical research. However, the privacy rule does not govern health information exchanges or some organizations holding electronic personal health records, which has led some to call for expansion of HIPAA's "covered entities." And, though the HIPAA privacy rule established a national standard, it permits significant state variation that makes complying with all applicable rules unnecessarily complex and presents a barrier to adoption of health information technology (HIT).

HLC POSITION

HLC and the Confidentiality Coalition (chaired by HLC) believe that the varying state standards allowed by the HIPAA privacy rule will serve as a serious impediment to sharing information in the context of a national health information network. In order for interoperability to be achieved, **Congress must make the HHS privacy rule the uniform national standard**, replacing the conflicting and confusing patchwork of state privacy laws. HLC believes **Congress and the administration must guard against enacting legislation or establishing regulations that would duplicate or conflict with the HHS privacy rule.**

HLC ACTION

- HLC has led the Confidentiality Coalition, working against legislation that would result in making the HIPAA Privacy Rule more restrictive and burdensome.
- HLC and the Confidentiality Coalition conducted a round of meetings with congressional staff, targeting those who work for House Energy & Commerce and Ways & Means members, to discuss HIT, patient safety, and concerns related to the privacy and confidentiality of patient information. Lobbying efforts included commenting on draft language, letters of concern and comments regarding introduced legislation, and developing related materials.
- HLC President Mary R. Grealy testified before AHIC and the House Oversight and Government Reform Committee on privacy and security issues with regard to digital health records.
- Senate Republican staff designated HLC and the Confidentiality Coalition to coordinate the health care community's comments on privacy legislation being considered as an amendment to the Senate HIT legislation.

HLC ACTION (con't)

- The Confidentiality Coalition conducted a briefing entitled “The Impact of the HIT Revolution” to showcase to Washington representatives and Hill staffers how HLC member companies and others use HIT to improve patient safety and quality while ensuring that patient information is properly protected.
- HLC and the Confidentiality Coalition delivered comments orally and submitted a written statement to the NCVHS Ad Hoc Work Group on Uses of Health Data regarding its draft report on “Enhanced Protections for Uses of Health Data: A Stewardship Framework for Secondary Uses of Electronically Collected and Transmitted Health Data.”
- HLC and the Confidentiality Coalition submitted written comments to the FTC explaining the role HIPAA has played protecting personal health information within the delivery of health care.
- HLC and the Confidentiality Coalition submitted written comments on provisions of the AHRQ proposed regulations to implement the “Patient Safety and Quality Improvement Act” that pertained to the confidentiality of patient information.
- HLC and the Confidentiality Coalition wrote a letter to the House Appropriations Committee expressing concerns regarding the privacy and security framework provisions included in the Labor-HHS-Education Appropriations conference report.
- HLC and the Confidentiality Coalition wrote a letter to all senators expressing opposition to the Leahy amendment to the “Wired for Health Care Quality Act” because of its overly burdensome and duplicative requirements.

TALKING POINTS

- The confidentiality and security of medical information is protected by privacy and security regulations issued under the “Health Insurance Portability and Accountability Act of 1996” (HIPAA). While still allowing for the needed flow of medical information in order to assure quality health care, the privacy rule ensures that patients' confidential medical information stays secure.
- HIPAA allows identifiable information to be used and disclosed only for legitimate health care activities. Disclosing identifiable information for other activities requires patient authorization. Strong penalties for unauthorized disclosures are established by the HIPAA Privacy Rule.
- Congress should reject legislation on issues such as data security, outsourcing, banking, internet, patient safety, health information technology, or genetic nondiscrimination that would duplicate or contradict the HIPAA Privacy Rule. It should also exempt the entities and activities already regulated by the HIPAA Privacy Rule from legislation dealing with other sectors that may overlap with health care.
- Congress should not hold legislation aimed at facilitating the adoption of HIT, a goal that has bipartisan support, while debate continues over how to address privacy. Focus groups conducted by the Coalition revealed that participants remain unaware of the framework for protecting the privacy of medical records that was established by the HIPAA Privacy Rule.
- Legislation to facilitate the adoption of HIT should establish a uniform federal standard for privacy and security of health information. Without federal action, HIT adoption will be impeded by conflicting state laws on privacy. Nationally uniform rules protecting confidentiality will provide patients the best protection.
- Requiring providers to obtain consent for each use of patients' information for the purpose of conducting health care operations would seriously delay and disrupt the care of patients, particularly the most vulnerable elderly and sick patients. For example, hospitals would be hampered in their ability to adequately implement programs aimed at reducing the incidence of infections and other medical errors if they are unable to obtain consent from all their patients.
- Interoperable electronic health records that are constrained by these types of consent requirements would provide only a fraction of the speed and efficiency necessary to improve patient outcomes. Having to obtain patient consent for use of medical records would dramatically slow and impede providers' current ability to deliver health care services.

As of August 8, 2008