

Confidentiality



HLC OUTLOOK: Confidentiality of Patient Information



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ISSUE

Since April 2003, healthcare providers, plans, and clearinghouses have been subject to the Health Insurance Portability and Accountability Act (HIPAA), privacy standards, which govern the use and disclosure of health information. These regulations protect the privacy of a patient's medical information and ensure that necessary information is available for providing quality healthcare and conducting vital medical research. Recently-enacted legislation creates new federal health privacy provisions for these and other entities. 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 serve as a serious impediment to sharing information in the context of a national health information network. In order to achieve interoperability, **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 continue to protect patient and consumer privacy while at the same time guard against enacting legislation or establishing regulations that would impede efforts to provide safe, quality and coordinated healthcare.**

HLC KEY POINTS

- The confidentiality and security of medical information is protected by privacy and security regulations issued under HIPAA. HIPAA allows identifiable information to be used and disclosed only for legitimate healthcare activities such as treatment, payment, and healthcare operations. Disclosing identifiable information for other activities requires patient authorization. Strong penalties for unauthorized disclosures are established by the HIPAA Privacy Rule.
- Requiring providers to obtain consent for each use of patients' information for the purpose of conducting healthcare 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 healthcare services.

HLC KEY POINTS (con't)

- HLC has led the Confidentiality Coalition to work closely with key legislators and Administration staff to ensure that privacy-related legislation to further protect patient and consumer privacy does not impede efforts to provide safe, quality, and coordinated healthcare.
- HLC submitted comments to HHS regarding new requirements to notify patients of a breach in health information.
- In January, HLC and the Confidentiality Coalition sent a letter to Speaker Pelosi and Majority Leader Reid supporting for many of the HIT provisions included in ARRA. The letter outlined concerns relating to privacy provisions including: definition of breach, accounting of disclosures, limitations of marketing, and enforcement issues that could have adverse consequences in the delivery of patient care.
- 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 effectively advocated that genetic information be treated as other healthcare information in medical records held by healthcare providers, health plans, and healthcare clearinghouses.

As of August 6, 2009