

April 1, 2001

The Honorable Tommy G. Thompson
Secretary, U.S. Department of Health and Human Services
Hubert H. Humphrey Building
200 Independence Avenue SW
Washington, D.C. 20201

Dear Secretary Thompson:

The National Association of Health Underwriters is pleased to provide these comments on the “Standards for Privacy of Individually Identifiable Health Information” (45 CFR Parts 160-164) pursuant to the requirements of Section 264 of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

The relationships between health institutions and related organizations are complex and varied. Mergers and the rise of integrated delivery systems have added layers of complexity that did not exist twenty years ago. These relationships are affected by the new regulation.

The provisions requiring the “minimum necessary” for disclosures are problematic. Coupled with the requirement that patients sign a specific patient consent before providers may use or disclose identifiable information for treatment, payment, and health care operations, these requirements will have significant unintended downstream consequences for treatment, payment and health care operations. These provisions will significantly impact the cost of providing care and insurance coverage to consumers at a time when our focus is to reduce or slow the increase in the cost of health care to make it affordable for all consumers.

NAHU’s broad outlook on medical privacy issues can be summarized as follows:

- ◆ The intended goal of the regulation is to make it easier for patients to understand their rights regarding information privacy. Most states have already enacted confidentiality standards and will continue to pass new medical confidentiality laws. NAHU is concerned that the resulting “patch-work quilt” of 50 separate sets of standards is costly and confusing for consumers, providers and payers, especially those who live and/or operate near or across state lines. NAHU believes that a uniform national system to protect the confidentiality of medical information would be less expensive and confusing for patients, providers and payers, alike.

- ◆ Confidentiality standards are necessary to protect consumers' non-public personal medical information, personal financial information and information disclosed during online transactions. However, legislative and regulatory initiatives designed to protect these three distinct types of information should also be distinct and cover only one type of consumer information at a time.
- ◆ Health insurance producers who are working on behalf of insurance carriers that are fully compliant with privacy requirements should also be deemed compliant with the requirements. We are particularly concerned about the impact of the sale of an agency. Would the new owner need to reacquire consents for hundreds or thousands of clients?
- ◆ Entities that must collect certain medical information should be required to seek, and retain on file, an authorization for the release of medical information. Such authorizations should allow for the disclosure of only the medical information necessary to accomplish the purpose for which it is disclosed.
- ◆ Any exceptions that would allow law enforcement officials to access confidential medical information without standard authorizations should be clearly laid out in any medical privacy legislation, to ensure that the release of such information only occurs for appropriate purposes.
- ◆ We are also very disturbed by the lack of adequate transition provisions in the regulation. According to the regulation's current compliance dates, in two years, no health care provider will be able to use or disclose identifiable patient information for most health care activities without a signed consent from patients. How providers will obtain consent forms from over 200 million Americans by the compliance date is a staggering problem that has the potential to interfere with all aspects of our health care delivery system. Extend the effective date to allow the necessary time and resources to roll out the regulation properly. This can be accomplished administratively.
- ◆ NAHU believes that the regulations exceed the scope of authority outlined in the HIPAA, since they apply not only to health-related entities, but also to business associates of the entities. NAHU believes that by broadening of the scope of covered entities, DHHS has increased the potential for confusion over compliance, which will be particularly dangerous without a uniform national standard. The addition of oral communications in the final regulation was also beyond the scope of authority authorized under statute and should be dropped.
- ◆ Fifteen states have passed prompt payment legislation while another fifteen are considering prompt payment legislation. Consents and minimum necessary rules will have the unintended effect of impeding the processing of payments and placing payors in jeopardy of running afoul of state law.

- ◆ Physician interns and residents and other providers currently in training learn more about a patient's condition than may be allowed under the rules. Under the minimum necessary rule, access to patient records would be restricted. This would hamper a trainee's ability to fulfill educational requirements. Furthermore, coordination of patient care could be at risk because of differing interpretations of limitations or scope of the minimum necessary will be at the caprice of the organizations handling the protected health information. Omissions will cause delays in care and harm to patients.
- ◆ Physicians often have credentials in several hospitals and will be expected to undergo privacy training at each facility where they have admitting privileges in order to obtain credentials. This could severely limit patient access to care, disrupt physician/hospital and HMO provider networks and further undermine patient satisfaction.
- ◆ Provisions that allow for affiliated entities to use a single shared notice of information practices and consent form, are only good for the period that the relationship of the *entire group* remains in effect. Facilities will have only two years to complete separate contracts with their affiliates and their business associates, greatly adding to their administrative costs while diverting funds that might have otherwise been applied to patient care.
- ◆ Pharmacies will no longer be able to fill prescriptions before the patient's signed, written consent is on file. Refill prescriptions, prescriptions for senior "snow birds," prescriptions transferred to a new pharmacy, prescriptions for people living and working in different states, and prescriptions for which a claim was rejected and had to be refilled, and the many prescriptions picked up by relatives and friends will all be affected. The impact on patients will be enormous and further strain pharmacy resources.

Patients deserve to have their health information protected and NAHU applauds HHS for their effort to promulgate effective privacy regulations. We agree with you that "we can protect patient privacy without harming access to health care or the quality of health care." We have, however, strong concerns that several sections of the rule have not undergone rigorous review. NAHU, in association with the Health Leadership Council (HLC), has voiced concerns about the regulation and we hope that you will further modify the final rule to better balance the need for patient privacy with sensitivity for the ramifications for patient care and health care operations.

Sincerely,

Mike Matznick
President