



NAHU POSITION ON CONFIDENTIALITY

Introduction

THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA), called for Congress to pass legislation to protect the confidentiality of patient medical records no later than August 1, 1999. Since Congress failed to act, HIPAA requires the Department of Health and Human Services to write regulations by February 2000. While there is general agreement on the need for such legislation, it is clear that absolute confidentiality may be unobtainable, and that a balance must be achieved between a person's reasonable desire and expectation of confidentiality, and a payer's right and duty to know what they are paying for.

Background

Technological advances have vastly improved the ability of providers to track patient care and outcomes, develop disease management programs, and exchange information with other providers to improve patient care. These same innovations have enabled payers and providers to exchange information quickly to improve the speed and accuracy of claims payment. Technological advances in administrative processes, combined with new medical advances in the treatment, and prevention of disease have radically changed and improved the way medical care is delivered in the United States. Americans today are a highly mobile society not only moving from place to place, but also frequently changing jobs. It becomes clear that the picture of a person's medical records being stored only in the family physician's locked filing cabinet is a thing of the past.

National Scope

Many states currently have some form of confidentiality standards that have been enacted at the state level. Secretary Shalala and others have suggested that new federal standards should be a "floor", allowing the states to adopt more stringent standards. The interstate approach to medical care delivered in today's society, necessitates adoption of a uniform set of national rules. The cost implications of fifty separate sets of standards, and the potential confusion for providers and payers, especially those which operate on or near state lines, would create further disruptions in treatment and the flow of critical information. **NAHU believes that a uniform national system would be more easily understood by patients, providers and payers, and that a single uniform system would be more cost effective. NAHU supports state enforcement authority of these uniform standards.**

Some groups have called for specialized confidentiality standards on certain “specially protected” portions of a person’s medical records, such as information on genetic testing, mental health history, or HIV status. This approach focuses attention away from the importance of protecting the entire medical record. In addition, the requirement that two sets of medical records files with different disclosure procedures be retained by each entity involved with the record, which may involve many providers, and multiple payers, is basically unworkable, and would greatly increase the cost of delivery of health care. NAHU believes that all health care information should be protected equally. For this reason, **NAHU cannot support a confidentiality proposal which calls for dual recordkeeping and disclosure requirements.**

Personal Health Information

NAHU believes that individuals should have an expectation of confidentiality with respect to their personal health information and records. A patient who is fearful that his or her medical records might be disclosed without authorization to a third party may withhold medical information, give false information, or simply not seek treatment for his or her medical condition, resulting in a lack of proper medical treatment, the wrong treatment or no treatment at all.

NAHU believes that individuals have specific rights with respect to their medical records. **Individuals should be able to inspect or copy their medical records, to request an amendment to their medical records,** and to have a written copy of any disagreement they have with the content of their medical records listed as a permanent part of their medical file, if their request for amendment is denied.

Financial Records

Confidentiality of financial information should be regarded with the same diligence as medical records. This should include: (1) customers with an annual notice accurately describing its privacy policy, and must also provide revised notices if at any time the privacy policy changes and the changes may be construed to be adverse to consumers (2) providing an “opt out” notice and (3) giving the consumer adequate opportunity to opt out of the disclosure. In addition, limitations are made to the extent to which information can be used by the third-parties that receive such information disclosed by another source. The recipients may generally only use the information in the same manner as the original source of the information uses it. Furthermore, licensees are prohibited from disclosing consumer account numbers for marketing purposes, unless the account numbers are disclosed to a third-party agent or service provider to market the licensee’s own insurance products.

Licensees do not have to follow the “opt out” requirements if they are sharing information with third-parties with whom they have joint marketing agreements or with parties that provide the licensee with services related to their insurance business

activities. In addition, the notification and “opt-out” requirements do not apply if disclosure is necessary to effect, administer or enforce a transaction requested by the consumer. Finally, nonpublic personal information can be shared without a restriction when: (1) disclosure is made with the consumer’s consent or at their direction, (2) to investigate potential fraud, (3) as part of compliance with industry standards concerning rate-setting, (4) when the disclosure is made to the licensee’s attorney or accountant, (5) when the disclosure is made to comply with a state, federal or local law, or (6) as part of compliance with a judicial order or as part of a judicial proceeding.

Permissible Uses of Medical Records

Health plans, health care providers, public health agencies, researchers, schools, and others who must collect medical information should retain on file a statutory authorization for the release of medical information. This authorization allows disclosure of only the medical information necessary to accomplish the purpose for which it is disclosed.

Without access to medical records, researchers could be hindered in their pursuit of raising the quality of health care. Health care activities related to treatment, health care business operations and legitimate research activities should not be required to obtain individual consent. Other non-health care related data collection activities should have the appropriate consent. Penalties for violation of these rules should be included in this policy.

NAHU recognizes that, while medical researchers may generally not require individually identifiable health information, there have been many occasions where it served the public health interest to be able to access individual information, for example, when discoveries have been made relative to dangers associated with certain medications. **NAHU believes that researchers subject to peer review should continue to have the opportunity to advise participants in clinical trials or their physicians of these types of negative findings.**

NAHU acknowledges that law enforcement may have a legitimate use for medical records where an authorization for disclosure has not been made, for example, in the lawful interest of public safety when investigating a felony. **NAHU believes, however, that these uses should be the exception and not the rule, and that specific requirements for their use should be laid out in legislation,** to ensure only appropriate release of information.

Conclusion

NAHU believes that the American consumer will benefit greatly from reasonable and understandable standards for the protection of the confidentiality of medical records.

These important protections will make for a healthier America by restoring confidence and trust in the confidentiality of the patient/provider relationship. NAHU looks forward to working with Congress on the passage and implementation of this very important legislation.