

February 1, 2001

Ms. Jenn O'Connor  
Director of Legislative Affairs and Education  
National Conference of Insurance Legislators  
139 Lancaster Street  
Albany, New York 12210

Dear Ms. O'Connor:

The National Association of Health Underwriters (NAHU) appreciates the opportunity to provide the National Conference of Insurance Legislators information about our views on protecting the confidentiality of consumers' medical information. NAHU represents more than 16,000 health insurance producers nationally, and every day our members service the health insurance needs of millions of Americans.

**NAHU's Position on the Confidentiality of Medical Information**

NAHU's position statements are initially developed by our policy committees, and then are ratified by our national legislative council and board of trustees. NAHU's position statement on the confidentiality of medical and financial information is currently being revised. I have enclosed a copy of our old position statement, and I will forward you a copy of our updated position statement upon approval. In the interim, NAHU's broad outlook on medical privacy issues can be summarized as follows:

- ◆ NAHU believes that individuals should have the right to expect reasonable confidentiality with regard their personal health information and records. This expectation is a crucial part of maintaining and providing high-quality patient care.
- ◆ 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.

- ◆ 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.
- ◆ 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 be listed as a permanent part of their medical file, if their request for amendment is denied.
- ◆ Specialized confidentiality standards for certain portions of a person's medical record (e.g., HIV status, genetic information) are unnecessary and draw attention away from the importance of protecting the privacy of the entire medical record. Furthermore, dual record keeping associated with such requirements would greatly increase the cost of delivery of health care.
- ◆ Medical researchers who have conducted research using non-identifiable medical information should have access to the contact information of their research and/or clinical trial subjects in the case of a negative research finding that could adversely impact the health of such subjects.
- ◆ 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.

### **U.S. Department of Health and Human Services' Standards for Privacy of Individually Identifiable Health Information Regulation**

With regard to the U.S. Department of Health and Human Services' (DHHS) recently released Standards for Privacy of Individually Identifiable Health Information regulation, NAHU is committed to protecting the confidentiality of individually identifiable information used to provide health care services, and has long supported the idea of uniform national privacy standards. However, we are worried that many of the provisions contained in the final regulation have the potential to seriously disrupt patient care.

NAHU is especially concerned about the impact of the new provision that requires that patients sign a specific patient consent form before providers may use or disclose identifiable information for treatment, payment and health care operations. We think that this provision will have serious consequences for patients: a similar law was repealed in Maine just 12 days after it took effect, since it caused severe disruptions for family members trying to obtain prescriptions for elderly parents and other family members.

NAHU is also troubled by provisions that require covered entities, such as hospitals, to use the "minimum amount of [health] information necessary" in treating a patient. This provision could endanger patient care by restricting the ability of health professionals to use a patient's complete medical history for treatment purposes.

Furthermore, we are concerned about the new regulation's potential impact on medical research, and fear that the new requirements could have serious unintended consequences by discouraging broad participation in, and use of data for, research 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.

Finally, NAHU feels that the regulations exceed the scope of authority outlined in the Health Insurance Portability and Accountability Act of 1996 (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.

#### **NCOIL Medical Privacy Model Act**

While NAHU certainly can understand why NCOIL would be interested in developing a model act concerning medical privacy, we do not feel that that this is the appropriate moment to pursue such legislation. The fate and content of the DHHS health privacy regulation is still unclear. As you know, the rule was scheduled to go into effect on February 26, 2001, but it, like many other regulations issued in the final days of the Clinton Administration, may be subject to a 60-day stay imposed by President George W. Bush. Under the new deadline, the federal privacy rule would become effective on April 27, 2001, but the Bush Administration may elect to propose changes to the rule, which could change its scope and delay implementation even longer. Furthermore, it is not even yet fully clear whether the privacy rule is subject to the president's stay order, since DHHS was directed by the U.S. Congress to promulgate the regulation.

Until the controversy over the DHHS rule is settled, NAHU believes that it would very wise for NCOIL to refrain from developing a medical privacy model act. Until the DHHS language is truly final, there would be great potential for conflicts (inadvertent or otherwise) between a NCOIL model law and the federal regulation.

If NCOIL were committed to developing a model medical privacy act at the present time, then NAHU would strongly urge that the language of that act be as similar as possible to the language contained in the DHHS rule. NAHU strongly believes that uniform national standards would be the most effective means of protecting the privacy of consumers' non-public personal medical information. The development of a NCOIL model act that was in conflict with the DHHS privacy rules would be contrary to that goal.

Thank you for soliciting NAHU's opinions on the issue of the confidentiality of medical information. Again, the statements listed herein are not yet part of a formally adopted NAHU position statement, but they do represent our line of thinking on medical privacy issues at this time. If you have any questions about these views, please do not hesitate to contact me at [jwaltman@nahu.org](mailto:jwaltman@nahu.org) or 703-276-3817.

Sincerely,

Jessica F. Waltman  
Manager of Health Policy

Enclosure: NAHU Position Statement on the Confidentiality of Medical Information