



Protecting the Confidentiality of Consumers' Financial and Medical Records Talking Points

In December 2000, the Clinton Administration released regulations to protect the privacy of consumers' medical information. This regulation is scheduled to go into effect in mid-April, but the Bush Administration has decided to conduct a comprehensive review of the new rule, which could change its scope and delay implementation even longer.

The federal government also took action recently to protect the privacy of consumers' nonpublic personal financial information. Title V of the federal Financial Services Modernization Act of 1999 (Gramm-Leach-Bliley Act; GLBA) requires states to develop financial privacy measures to regulate the business of insurance by July 1, 2001.

Now that the final federal medical privacy rules have been released and the states are beginning to act in order to comply with the GLBA financial privacy requirements, all of these confidentiality issues are at the forefront of public discussion. The following points represent NAHU's views on the privacy of medical and financial information at this time:

- NAHU believes that individuals should have the right to expect reasonable confidentiality with regard their personal health and financial information.
- Most states have already enacted confidentiality standards and will continue to pass new medical and financial 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 and financial information would be less expensive and confusing for patients, providers and payers.
- Confidentiality standards are necessary to protect consumers' nonpublic 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.
- For states that are taking action to comply with the financial privacy requirements of GLBA, NAHU encourages the use of the National Conference of Insurance Legislators' Model Financial Information Privacy Protection Act. NAHU feels that the NCOIL privacy model is a far preferable option to its NAIC counterpart, the Model Privacy of Consumer Financial and Health Information Regulation. The NCOIL model is less onerous for agents and has less potential to cause conflict with the federal health privacy regulations. NAHU also believes that that the health information provisions of the NAIC model regulation, which go above and beyond what was required by GLBA, will be costly and confusing to implement, and will ultimately have a negative impact on insurance consumers.

- 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 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 from the importance of protecting the privacy of the entire medical record. Furthermore, the 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. This would ensure that the release of such information only occurs for appropriate purposes.
- NAHU appreciates the Bush Administration's decision to review the final DHHS rule on the privacy of medical information. NAHU was concerned that the final rule released by the Clinton Administration did not provide for a uniform national privacy standard, and that provisions in the rule had potential to both jeopardize the quality of patient care and significantly increase the cost of health care.