

Health Policy, Legal, and Ethical Issues

(Assessment and Regulation of Health Services)

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For:

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“The reading assignments provide background on the evolving role of the government in health services, including the Health Insurance Portability and Accountability Act (HIPAA). Discuss the (1) administrative simplification, and (2) privacy and confidentiality provisions of the HIPAA and explain their impact upon healthcare providers, administrators and consumers. What challenges do you foresee these provisions imposing in terms of managing health systems?”



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Introduction

The Health Insurance Portability and Accountability Act of 1996 (PL 104-191), also known as HIPAA, is a law with various sections relating to the delivery of health care including, but not limited to, fraud and abuse, insurance portability, and administrative simplification. It is the intent of HIPAA to improve the efficiency and effectiveness of the nation's health care system by encouraging the widespread use of electronic data interchange in health care. By promoting greater use of electronic transactions and eliminating ineffective paper forms, the Department of Health and Human Services estimates that the administrative simplification regulations are expected to provide a net savings of \$29.9 billion over the next 10 years to the health care industry.

The development of electronic transaction code sets will establish standards and data content formats for submitting electronic claims and other administrative health care transactions. All health care providers will be able to use this electronic format to bill for their services and all health plans will be required to accept the standard electronic claims, referral authorizations, and other transactions. The deadline for compliance with this regulation was October 16, 2002. However, if a covered entity filed a request for an extension with the Department of Health and Human Services by October 15, 2002, the deadline for compliance could be extended by one year.

As mandated by law, HIPAA for the first time established a federal framework for the protection of individually identifiable health information. The privacy rule establishes standards to protect an individual's medical records and other health information. The privacy law, among other things, allows for more consumer control over health information, sets boundaries on medical record use and release, provides for safeguards to ensure security of personal health information, and provides for accountability for medical records use and release. The deadline for compliance with the medical records privacy regulations is April 14, 2003. The Clinton administration first issued a version of the privacy rule in December of 2000. The research community responded with the concern that the limits on the use of, and access to, health records that the rule imposed would unduly burden biomedical, epidemiological, and health-sciences research. An additional concern was that the new liabilities and compliance requirements associated with disclosing patient information would discourage providers and health care facilities from providing data to researchers. Before anyone would be required to comply with the December 2000 provisions of the privacy rule, the Bush administration proposed changes, leading to the current August 2002 version. Although the new rule is an improvement, it still poses serious and ill-advised obstacles to the conduct of clinical studies and all other research involving access to health information (Kulynych and Korn, 2002).

That was a brief summary of the impetus behind HIPPA, leading to the following discussion about the administrative simplification, the privacy and confidentiality provisions, and an explanation of the likely impact upon health care providers, administrators, and consumers.

Administrative Simplification

The Secretary of Department of Health and Human Services will establish standards to enable most health records and financial transactions to be exchanged electronically. Unique identifiers will be established for users, purchasers, and suppliers of health care services. It certainly makes sense from an administrative simplification and economic standpoint to transition medical information to electronic transactions and records, given the current technology available and in use in other areas of commerce and industry. It is interesting that HIPPA was initially passed in 1996 with the hopes to have it in place prior to Y2K, but probably some of the delay and hesitation in the transition was likely related to waiting for Y2K compliance. It also makes sense to have federal involvement, rather than leaving these issues to individual plans, local regions, or states as a large degree of variability would be seen. Even though the estimated savings to the health care industry are to be 29.9 billion over the first 6 to 10 years the estimated start-up costs range from 6-42 billion. With this immense start-up cost, who will fund the program to get it off the ground? Funding will likely be shared between the health care industry and government and will consequently be passed on to consumers to include taxpayers and patients receiving care, adding to the already escalating health care costs. The costs will not end with the initial start-up. There will also be costs associated with administration of the system, as there will undoubtedly be problems, or “glitches” in the system that will need to be corrected or updated, and any system will require routine maintenance and support. It is hard to argue in today’s world of computer technology that the U.S. Health Care System would not be more efficient and effective as a result of HIPPA and electronic transactions, but it is important to remember that it will come at a cost to consumers and taxpayers.

Privacy and Confidentiality Provisions

The HIPPA Privacy Rule is a federal rule designed to protect the medical records of an individual. It applies to individually identifiable health information in all forms; written, electronic, and oral. Some states have moved to address medical record privacy concerns of their citizens, but the HIPPA Privacy Rule establishes a privacy threshold that must be met in every U.S. jurisdiction. Individually identifiable health information, including demographics, is protected

under HIPPA. Health information covered by the rule generally may not be used for purposes not related to health care without explicit authorization from the individual. The disclosure of information will be limited to the minimum necessary for the intended purpose. A person who inappropriately discloses individually identifiable health information may be fined \$50,000, imprisoned for one year, or both. If such disclosure is under false pretenses, the offender may be fined \$100,000 and imprisoned for up to five years, and up to \$250,000 and 10 years in prison for obtaining or disclosing protected health information with the intent to sell, transfer or use it for commercial advantage, personal gain, or malicious harm (HIPPA Privacy Rules, 2002).

I think we can all agree that the confidentiality of medical information is an extremely important issue, but it seems somewhat out-of-balance with the concerns for confidentiality of other types of information. I think in many instances an individual would be much less concerned that someone know they have a certain medical condition as apposed to their address, age, income level, home telephone number and e-mail address. This whole concern for confidentiality of medical information has been addressed in the wrong way. It would be a lot simpler to legislate and regulate insurance companies and employers from discriminating against health conditions. Then, managing the confidentiality of medical information would be less relevant.

Impact on Health Care Providers

The impact on health care providers will be substantial. There are many experts in clinical practice that are petrified of the impact that HIPPA will have on many aspects of medical care. First, contrary to the military system, the majority of practices are not presently computerized. And, contrary to the military system, most practices do not have billions of dollars that they can use to establish a good system. Despite there being an increasing number of off-the-shelf systems, many have their flaws. I mean, how many 'holes' have been found in Microsoft Windows, the most expensive and intelligently-built program out there. The government spent billions on CHCS I and then CHCS II, and these are marginal programs that fail to do many of the things that clinicians need them to do. There are projections by the Department of Health and Human Services that it will cost healthcare providers, organizations, and their business partners approximately 17.6 billion over 10 years to replace, design, implement, and enforce these changes mandated by HIPPA. These costs of acquiring and implementing this technology are felt to be offset by the savings in reduced costs and cash flow in the future, but what about now? It seems that implementing these changes could have a large impact, especially financial, to the smaller physician groups/individual providers making their existence even more difficult in the current market.

An additional point that is being greatly undersold is the profound impact that these new regulations will have on research. Most of our medical data does not come from well-designed randomized clinical trials. It comes from retrospective data-based driven hypothesis-generating studies. And, more and more, research is being done by smaller centers in the community. The HIPPA regulations are widely foreseen to undermine many types of research and to significantly increase the cost of performing research. Even with the relaxed 2002 version of the law the data must be stripped of so much information that the remainder may not be useful for research. Though well-intended, HIPPA will have huge ramifications.

As far as how electronic record simplification and privacy will impact providers, it is easy to be skeptical. Will the simplification require increased administrative time for the provider on the computer, further stretching the time constraint for patient care? Electronic records are clearly much better with regard to legibility and the ability to locate information, but it seems like the information while easier to read and find is often lacking in substance.

Impact on Administrators

The military has had its failures with CHCS and MODS. These systems work well, but it takes the time and patience of the administrators managing the data to make the system "a good system". We do not think there will be a lot of compliance at first and the struggles that the DoD has had will be compounded in the civilian sector. It will likely put a financial strain on the agencies required to implement it, and it will require the hiring of more skilled employees for system maintenance and data entry. There is also the concern of "error" in the input of information into an electronic database. It seems that the creation of codes to identify the different players leaves room for error. For example, if something is incorrectly identified or labeled in the record, it can be hard later to remedy the error. It seems that most agencies treat computer databases as "infallible" and the fact that something is "in the computer" is often used to demonstrate the "truth" of the information. As we all know, it is hard to argue against the computer because it doesn't talk back. It is also hard to find the source of an electronic error. This has the potential to create frustration for all involved, especially in the administrative areas.

The Health and Human Services Secretary will establish a program to coordinate federal, state, and local programs to control health plan fraud and abuse. They will also establish a fraud and abuse data collection system for reporting final, adverse actions against health care providers, suppliers, and practitioners. What impact this system will have on administrators is yet to be determined, but will undoubtedly have financial and administrative personnel requirements.

Impact on Consumers

From a consumer standpoint one of the benefits coming out of HIPPA is it restricts an employer's or insurer's ability to use pre-existing condition exclusions or limitations. Pre-existing condition limitations may not exceed 18 months. No pre-existing condition limitation may be applied to an individual who was continuously covered for 12 months or more under the prior employer's health plan. In addition, no pre-existing condition limitation can be applied to children who become covered under "creditable coverage" within 30 days of birth, adoption, or placement for adoption. These aspects of the act should clearly benefit consumers.

What is less clear are the potential benefits from the federal medical-privacy rule. The privacy rule is touted as a federal framework to protect an individual's medical record and personal health information. It allows for more consumer control over health information, and sets standards for medical record use and release. However, this increased privacy comes at a cost. The consequences to public health, epidemiological, and basic biomedical research could be devastating and may prove to be too high a cost for the additional privacy afforded by the rule. In the end this will be detrimental to consumers as the development of medical advancements will be significantly hindered.

Conclusion

What is unfortunate is that HIPPA is, according to many, one of the most complex pieces of legislation that has been created in the last decade. Furthermore, it has changed substantially since 2000 and continues to morph almost daily. Even the experts have to be somewhat vague about "HIPAA today" as it will likely be a different HIPAA tomorrow. Many changes in HIPPA seem to be a response to the realization that this legislation is overly complex, unlikely to be fully embraced by practitioners, and is mostly unenforceable. HIPAA also has no teeth. There are no HIPAA police and an investigation presently would require patients or employees blowing-the-whistle. Having seen many of the tenets of HIPAA being followed in the military system (like preventing patients from seeing data on computers, password protecting data, striving to limit access to data to those who need to have that level of access, etc.), much of the spirit of HIPAA makes sense. The reality of HIPAA underscores the way in which our government can make a good thing go awry. Most clinicians and practices are so overwhelmed and confused by this legislation that it seems that many will ignore it all together until it is clear what they have to do and the consequences they will suffer if they don't.

