



The
ERISA
Industry
Committee

February 6, 2009

Dear Member of Congress:

On behalf of The ERISA Industry Committee, I commend your efforts to make concrete investments in the adoption of Health Information Technology (HIT), a policy for which the employer community has long advocated. ERIC has been engaged on this issue for almost 20 years.

We are concerned, however, that in the rush to fashion an information technology system that protects against privacy concerns—a balancing effort that has been under negotiation for two decades—we may fall short of both objectives.

The ERISA Industry Committee (ERIC) is a non-profit association committed to representing the advancement of the employee retirement, health, and compensation plans of America's largest employers. ERIC's members provide benchmark retirement, health care coverage, compensation, and other economic security benefits directly to tens of millions of active and retired workers and their families. ERIC has a strong interest in proposals affecting its members' ability to deliver those benefits, their cost and their effectiveness, as well as the role of those benefits in the American economy.

The Congressional Budget Office and other independent evaluators project that the widespread adoption of portable, interoperable electronic health records will save billions of dollars by significantly reducing medical and prescribing errors that too often lead to terrible outcomes for patients, wastes money for both private and public plans, and would be totally unacceptable in any other enterprise.

Projections also forecast significant administrative cost-savings, contingent upon electronic health data being able to flow between group health plan administrators and providers in order to ensure the efficient reimbursement for treatment and other health care operations and in order to incent evidence based medicine and other quality initiatives.

We offer the following recommendations to ensure that HIT is able to flow efficiently and appropriately, while safeguarding patient privacy:

1. **Extend current HIPAA rules to cover electronic health records.** The Health Insurance Portability and Accountability Act (HIPAA) prescribes detailed rules on how patient data must be handled. Handlers of health information are used to complying with these rules, which require patient consent for the transmission of information used for purposes other than treatment or “health care operations.”
2. **Include reasonable, intelligible, practical data disclosure accounting rules.** Requirements to account for every single instance in which patient data is accessed or shared electronically is administratively burdensome and unworkable. Under some proposed language, e-mail communications making reference to patient data would be considered covered by accounting requirements. Accounting requirements should be restricted to disclosures that fall outside of HIPAA’s safe-harbor of treatment or health care operations.

3. **Do not discourage disease management, pharmacy benefit management, third party care coordination.** While it is important to protect against frivolous and invasive marketing by vendors to patients based on information contained in their health records, it is important to continue facilitating appropriate third-party care coordination; restrictions on marketing should not have a chilling effect on this legitimate practice.
4. **HIT rules should be federally enforced, consistent with other statutes, and preempt overlapping or conflicting state and local rules.** It is imperative for handlers of HIT to be able to adapt to, and comply with, new privacy rules that there be one ultimate authority that promulgates and enforces a nationally uniform regulatory regime: the federal government. For obvious reasons, multi-state employers, health plans, hospitals, provider networks, and pharmacies would be seriously confounded if required to setup differing compliance and administrative systems in all fifty states. Further, enforcement should not be granted to local law enforcement, and remedies should not be expanded beyond those available in HIPAA and ERISA.

Thank you for your consideration of our suggestions. To discuss any of these matters further, do not hesitate to contact me.

Sincerely,

Mark J. Ugoretz
President
The ERISA Industry Committee