



May 28, 2013

Brittany Havens
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D. C. 20515

RE: Subcommittee on Oversight and Investigations
Hearing "Does HIPAA Help or Hinder Patient Care and Public Safety?"
Questions

Ms. Havens:

I included responses to the questions posed by Congressman Murphy and hope his concerns are adequately addressed in the content. Please let him know it is an honor and a pleasure to assist him in this process, and I am available should he have any additional questions or opportunities where I can be of service.

1. Why do you think there are so many misconceptions about HIPAA? Do you think more training would help dispel the myths that many health workers have about the law? Whose responsibility is it to dispel these myths and clarify the privacy rule?

The misconceptions about HIPAA are a product of the methods chosen by organizations to disseminate and enforce the regulations. The United States government makes information available to the public on websites and through a variety of announcements, but it is large health care programs that interpret the material and work to apply it to routine practice. The individual clinician, whether in solo, group, or medical center based practices, frequently receives information about HIPAA through this filter. The intent of the regulations is well understood and supported by most if not all clinicians. However, the administration in local medical organizations tends to focus on the consequences of non-compliance, in part because of the substantial fines that can be imposed and the adverse publicity that results when violations are discovered. As a result, education programs tend to convey a message that HIPAA not only contains guidelines that are essential for patient privacy and confidentiality, but also that non-compliance risks substantial penalties for the organization and, both directly and indirectly, for the individual involved. The sense in efforts at communication and monitoring is "if we're in trouble, you're in trouble." As a result, clinicians see HIPAA as being imposed on them by large and powerful forces, with little or no opportunity for them to provide feedback or suggestions for change. There is minimal investment in carefully reviewing or critiquing the content for local or national organizations, and misconceptions of the law easily develop.

The solution is not simply more training for more individuals, but a different approach to training, one that works to apply the law to a variety of clinical situations and conveys a message that enforcement is a work in progress. Physicians and a variety of medical professionals and organizations should continue to provide feedback through local HHS agencies on clinical

situations where the law adversely affects the best interests of the patient. Information can be shared in writing, through formal meetings, through the creation of webinars, and through a variety of electronic media. Clinicians can also enable families and caregivers who feel excluded by provisions of the law and less able to care and support loved ones to have a voice in the process. Although each patient's story is somewhat unique, there can be common threads that convey a powerful message on the potential risks and consequences of the law. Encouraging this dialogue enhances the skills of the clinician and educates government agencies on the practical application of HIPAA. It also empowers people to make necessary change.

2. Do you have any thoughts on how well HHS has communicated with the health profession? Do you think HHS needs to dialogue more with doctors and professional associations? What would this dialogue look like.

Responsibility begins with the Federal Government and HHS conveying a sense of greater openness and collaboration around the content and enforcement of HIPAA. It is then up to professional organizations in medicine, hospital administration, and clinical care to respond and encourage members to participate. These efforts can be national, local, or based within the operation of each clinical practice. The individual providing care can best advocate for the patient and the family, and shares an obligation to work in their best interests.

The focus of communication by HHS is on an understanding of the law, why it is important, and how it will be applied. A great deal of information is available on government websites and in a variety of publications. However, the federal government has abdicated much of the responsibility for education to local patient care organizations, frequently university-based or corporate-based health care programs with large staffs who are at the greatest risk for a HIPAA violation. At times the intent of the law is lost in the need to conform to expectations for fear of consequences. HHS should have a more direct line to those individuals caring for debilitated and challenging patients and struggling to comply with HIPAA regulations. This should be an active and evolving process with HHS constantly reviewing the content and application of the law and recognizing that, as in health care, there is still much to learn.

Sincerely,



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