

December 3, 2007

The Honorable Michael B. Enzi
United States Senate
379A Russell Senate Office Building
Washington, DC 20510-5004

Dear Senator Enzi,

The undersigned members, a broad-based group of hospitals, medical teaching colleges, health plans, pharmaceutical companies, medical device manufacturers, vendors of electronic health records, biotech firms, employers, health product distributors, pharmacy benefit manufacturers and pharmacies, founded to advance effective patient confidentiality protections, is concerned about a possible amendment to S. 1693, the "Wired for Health Care Quality Act," that would impose expansive new privacy regulations on providers, health plans, employers and others. We understand that the amendment is based on S. 1814, the "Health Information Privacy and Security Act," sponsored by Senator Patrick Leahy (D-VT).

We believe that the privacy of patients' health information is of the utmost importance; otherwise, patients who are concerned about their privacy could choose to forego or delay necessary care. We emphasize our commitment to safeguarding the health information of each and every individual.

Confidentiality of patients' medical records is protected by the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules. The Confidentiality Coalition believes that the comprehensive HIPAA regulations strike the appropriate balance between protecting the privacy of a patient's medical information while, at the same time, ensuring that necessary information is available for medical treatment and payment, quality assessment and improvement activities, disease management and care coordination, as well as medical research.

By contrast, the Leahy privacy amendment would slow or prevent many of these activities, seriously affecting those with serious and chronic illnesses. The requirement that patients be allowed to refuse the use of their information would jeopardize medical treatment, payment, research, chronic disease management, and other important activities. During promulgation of the HIPAA Privacy Rule this approach was rejected by both the Clinton and Bush Administrations because of its significant potential for negative impact on patient care.

The much-touted benefits of health IT, including improved quality and efficiency, will not be realized if information exchange is constrained by numerous and duplicative authorization or consent requirements. One hospital system utilizing patient safety data collected via HIPAA-sanctioned methods was able to achieve a rate of hospital-acquired bloodstream infection that is 62 percent lower than the national rate. Under the Leahy amendment, quality-improvement activities such as these would be constrained by burdensome patient authorization requirements.

If patients are given the unlimited ability to withhold information, there will be negative quality outcomes in both the ongoing delivery of care and medical research. Providers are very concerned about quality and liability in a system predicated on reliance on incomplete information. Research to improve health quality and patient outcomes cannot be readily achieved if critical data is missing.

Furthermore, the amendment's new accounting requirements would be costly to implement with little benefit to patients. One health plan spent several hundred thousand dollars to purchase a system to track current disclosures under HIPAA only to have 1 member out of 3 million exercise their right to the data.

In addition, the amendment would subject medical providers, plans, employers and others to new and duplicative security and accounting regulations, despite the fact that the HIPAA Privacy and Security rules already include comprehensive requirements in these areas.

Health care providers, plans and clearinghouses have made a tremendous effort - at tremendous cost - to ensure compliance with the Privacy Rule. One estimate placed the five year costs of implementing the HIPAA Privacy Rule at \$42.9 billion. Though well intended, the Leahy amendment will divert scarce resources from patient care to administrative compliance. Particularly in light of rising health care costs, health providers, payers and patients can ill afford new regulatory regimes and their resulting costs.

We urge Congress to refrain from addressing privacy as a part of broader HIT legislation. Before making any modifications to the HIPAA Privacy Rule, Congress should be absolutely certain that additional requirements are necessary as broad and sweeping changes may dramatically affect patient care. We urge you to refrain from supporting the Leahy amendment.

Sincerely,

Aetna
American Benefits Council
American Hospital Association
Association of American Medical Colleges
Blue Cross and Blue Shield Association
Blue Cross and Blue Shield of Tennessee

CVS Caremark
DMAA: The Care Continuum Alliance
Federation of American Hospitals
Greenway Medical Technologies
Healthcare Leadership Council
IMS Health
Marshfield Clinic
Medco Health Solutions
National Association of Chain Drug Stores
National Retail Federation
Quest Diagnostics
Quintiles Transnational Corporation
UnitedHealth Group
U.S. Chamber of Commerce