



**Association of
American Medical Colleges**
2450 N Street, N.W., Washington, D.C. 20037-1127
T 202 828 0460 F 202 862 6161
www.aamc.org

Darrell G. Kirch, M.D.
President and Chief Executive Officer

July 23, 2008

The Honorable John Dingell
Chairman
Committee on Energy and Commerce
Commerce
U.S. House of Representatives
Washington, DC 20515

The Honorable Joe Barton
Ranking Member
Committee on Energy and

U.S. House of Representatives
Washington, DC 20515

Dear Chairman Dingell and Ranking Member Barton:

On behalf of the Association of American Medical Colleges (AAMC), I write to thank you for your continued leadership in promoting the adoption of interoperable and secure health care information technology (HIT) that has the potential to greatly improve health care quality, prevent medical errors, and increase administrative efficiencies. The AAMC represents the nation's 129 medical schools, nearly 400 major teaching hospitals and health systems, and 94 academic and professional societies representing 109,000 faculty members.

The "Protecting Records, Optimizing Treatment, and Easing Communication through Healthcare Technology Act" (H.R. 6357), makes great strides in promoting the adoption of health information technology. At the same time, however, we remain concerned that some of the bill's provisions will have a far-reaching impact on the day-to-day operations of teaching hospitals and health systems, and faculty practice plans, and will impede ongoing efforts to improve the quality and safety of health care delivered at our member institutions. We are particularly concerned with Section 312(d) of the measure, which would require health providers using electronic medical records (EMR) to obtain "consent" for uses and disclosures of protected health information for "health care operations," as defined by the HIPAA Privacy Rule.¹

Distinguishing the EMR consent requirements from those for paper records creates a substantial disincentive to EMR adoption. Among the advantages of an EMR is that it makes quality/safety assurance and improvement activities easier, as it enhances the ability to access and analyze patient data. The data in the EMR also can be used for other health care operations, such as reviewing the competence of health care professionals, evaluating provider performance, improving cost effectiveness and conducting residency and other health care training programs. If patients are allowed to decide that they do not want their data used for health care operations, health care operations databases will become progressively more skewed over time, and the reliability and validity of the data

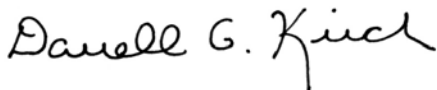
¹ 45 CFR Sec. 164.501

that underpins all of these important activities will be undermined to the detriment of all patients who benefit from them. This is an instance in which the right to privacy of an individual patient conflicts head-on with the duty of health care providers continually to assure and improve multiple aspects of the care they deliver to all of their patients.

When the HIPAA privacy final rule was first published in 2000, it required covered health care providers to obtain consent for the use or disclosure of protected health information to carry out payment, treatment, and health care operations.² In August 2002, citing “significant practical problems that resulted from the consent requirements in the Privacy Rule” and a “large number of treatment-related obstacles raised by various types of health care providers that would have been required to obtain consent,” the Department of Health and Human Services published a modified final Privacy Rule that removed the consent requirement for treatment, payment, and health care operations, acknowledging the need to “allow activities that are essential to quality health care to occur unimpeded.”³ By restoring the consent requirement for health care operations that use protected health information in an electronic medical record, the bill would again place an impediment to activities that are “essential to quality health care.”

We have discussed these concerns with your staff, and we welcome the opportunity to continue to work with you on this issue as this bill moves forward. We remain committed to the goals of promoting the adoption of cutting edge health information technology and ensuring that patients’ protected health information remains secure. Thank you again for your leadership in this area.

Sincerely,

A handwritten signature in black ink that reads "Darrell G. Kirch". The signature is written in a cursive, slightly slanted style.

Darrell G. Kirch, M.D.

cc: Members of the House Committee on Energy and Commerce

² 65 FR 82,472 (2000)

³ 67 FR 53,209 (2002)