

HEALTH INSURANCE PRIVACY LAW PUTS LIMITED RESTRICTIONS ON PRAYER LISTS

By Jack Straus

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IN 1996, CONGRESS PASSED THE Health Insurance Portability and Accountability Act of 1996 (HIPAA). The HIPAA privacy rules create national standards to protect medical records and other personal health information. As the Department of Health and Human Services (HHS) notes on its Web site, HIPAA does these things:

- Gives patients more control over their health information.
- Sets boundaries on the use and release of health records.

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- Establishes appropriate safeguards that health care providers and others must achieve to protect the privacy of health information.
- Holds violators accountable, with civil and criminal penalties that can be imposed if they violate patients' privacy rights.
- Strikes a balance when public responsibility supports disclosure of some forms of data—for example, to protect public health.

It does a few other things for patients:

- It enables patients to find out how their information may be used, and about certain disclosures of their information that have been made.
- It generally limits release of information to the minimum number of people reasonably needed for the purpose of the disclosure.
- It generally gives patients the right to examine and obtain a copy of their own health records and request corrections.
- It empowers individuals to control certain uses and disclosures of their health information.

All of these privacy requirements are imposed on what HIPAA calls “covered entities.” Covered entities are health care providers that conduct certain transactions in electronic form, health care clearinghouses, and health plans.

There has been some discussion, and speculation, that the strict privacy rules of HIPAA would affect the way churches and parachurch groups share prayer requests concerning individuals with health problems. Would the organizations publishing such prayer requests be liable for disclosing what HIPAA calls “Protected Health Information” (PHI)? Will HIPAA severely restrict what can be published in prayer lists or who can be prayed over from Sunday morning pulpits? The discussion has heated up recently since April 14, 2003, was the date when Covered Entities were supposed to have implemented the standards to protect health information.

First, the good news is that churches and parachurch organizations are not considered “covered entities.” So from that perspective, there would be no restrictions on prayer lists under HIPAA. However, HIPAA recognizes other entities as “Business Associates” and requires that the covered entities contract with Business Associates to protect health information. Many of you have no doubt received from your

health insurance provider a document called a Business Associates Agreement. Much of the language in that agreement was written by the folks at HHS and is posted on the HIPAA Web site as sample business associate contract provisions. Your health insurance provider has required you to sign the agreement. What does it mean?

Business Associates are subject to a list of requirements. They must do the following:

- Safeguard protected health information.
- Permit an individual to access protected health information that the BA may be holding.
- Amend any protected health information in its records if so required by the covered entity.
- Maintain an accounting of disclosures of health information and provide it to the covered entity or the covered individuals when required.
- Distribute privacy notices to individuals when required by the covered entity—although the BA is not required to create a notice of privacy practices.
- The sample Business Associates Contract Provisions more specifically cover these areas:
 - Business Associates cannot use or disclose Protected Health Information other than as permitted or required by the Agreement or by HIPAA.
 - Business Associates must use appropriate safeguards to prevent the use or disclosure of health information.
 - Business Associates must mitigate any harmful effect of a use or disclosure of health information.

- Business Associates must report to the Covered Entity any use or disclosure of the health information.
- Business Associates must make sure that any agents or subcontractors to whom they provide health information agree to the same restrictions and conditions in the Business Associates Agreement.
- Business Associates must allow the Covered Entity access to any protected health information.
- Business Associates must change any of the health information in its records where the change is requested by the Covered Entity.
- Business Associates must make their internal practices and records relating to the protected health information available to the regulators so that they can determine if the Covered Entity is complying with HIPAA.
- Business Associates must document any disclosure of health information.
- Business Associates must respond to the Covered Entity when the Covered Entity is requesting information that has in turn been requested by an individual about his or her protected health information.

These are not the only provisions that can be put into a Business Associates Agreement. The Covered Entity may add additional provisions that are related to the privacy rules but are not actu-

ally required by the rule. The example given by the HHS is that provisions may be added requiring the Business Associate to help the Covered Entity in other ways to meet its obligations. And there may be provisions on record retention.

So, what can the Business Associate do? The BA can use the protected health information for management and administration of the health and medical policies of the BA, and the BA can disclose the information where proper management and administration require that disclosure. But, if it discloses that information, the BA must obtain reasonable assurances from those who receive the information that it will remain confidential, used only as required by law, and the person must notify the BA of any instances where the confidentiality of the information has been breached.

The bottom line is that although churches and parachurch organizations are not Covered Entities and thus have no restrictions on them in regards to prayer requests properly transmitted to them, they are restricted in the types of prayer requests that they can transmit to others where one of their employees is concerned. If the employee is covered by a health plan of the organization, prayer requests related to the health of that employee should not be transmitted to anyone without that employee's specific permission. To do otherwise would violate the Business Associates Agreement.

For more information, you can check out the HIPAA Web site at www.hhs.gov/ocr/hipaa. 

WILL HIPAA SEVERELY RESTRICT WHAT CAN BE PUBLISHED IN PRAYER LISTS OR WHO CAN BE PRAYED OVER FROM SUNDAY MORNING PULPITS?
