

patientprivacyrights

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FEDERAL GOVERNMENT ADMITS TO LAX MEDICAL PRIVACY ENFORCEMENT

PRIVACY GROUP URGES TOUGHER PROVISIONS FOR MEDICAL PRIVACY LAW

WASHINGTON, DC – The U.S. Department of Health and Human Services admitted today in a news account to lax enforcement of the nation’s federal privacy law, citing only one prosecution and a dismissal rate of 70 percent of all over 17,000 privacy complaints in three years.

In response, Patient Privacy Rights, a consumer watchdog group, urged Congress to strengthen federal privacy provisions, which were weakened with a 2003 regulatory amendment that opened up medical records to over 600,000 businesses without patients’ knowledge and consent.

Dr. Deborah Peel, President of Patient Privacy Rights, said, “As we suspected and as HHS has admitted, medical privacy protections and enforcements are virtually nonexistent in this country. The reason the vast majority of complaints are dismissed is because HIPAA is almost impossible to violate. It is toothless.”

The news account quoting a HHS official appears below.

In 1996, Congress passed the Health Insurance Portability and Accountability Act, which required HHS to develop regulations around patient privacy rights. President Bush implemented the regulations in April 2001; however, HHS later amended them in 2003, allowing “covered entities” to obtain patients’ medical records without their knowledge and consent for health-related business activities. These covered entities include employers, drug and insurance companies, marketing firms, accountants, banks and financial service companies, data warehouse, medical transcribers, data processing firms, consumer reporting agencies, pharmacies, legal services, and government agencies

who can fish through identifiable medical data for information to use for their own business purposes.

Peel said HIPAA should be fixed before Congress passes legislation to promote the adoption of a nationwide interoperable system for the electronic transfer of medical records via a network of healthcare databases. The Senate has passed and the House is expected to pass soon legislation that incorporates the existing privacy protections found in HIPAA. Without a stronger federal medical privacy law, this legislation will lead to greater abuses of patient privacy, said Peel.

About Patient Privacy Rights

Patient Privacy Rights is a national consumer watchdog organization based in Austin, TX. The mission of Patient Privacy Rights is to empower Americans to protect and preserve their human rights to medical privacy. Patient Privacy Rights believes Americans should have the right to decide who can see and use their medical records and is educating Americans about threats to patient privacy. They have launched an online petition for Americans to tell Congress "I Want My Medical Privacy".

Web site: www.patientprivacyrights.org

"I Want My Medical Privacy" Petition: www.patientprivacyrights.org/petition

Article In Reading Eagle Newspaper, Reading, PA, by reporter Dan Kelly:

**Privacy rules yield 1 prosecution, U.S. official says:
Investigations cleared 70 percent of 17,000 complaints filed
under provisions of the Health Information Portability and
Accountability Act, according to a federal spokesman.**

(Reading Eagle (PA) (KRT) Via Thomson Dialog NewsEdge) Feb. 24--The federal law that was supposed to be the watchdog over everyone's medical privacy appears to have more bark than bite.

When privacy provisions to the 1996 Health Information Portability and Accountability Act, or HIPAA, were enacted three years ago, penalties up to \$250,000 in fines and 10 years in prison created a scare that bordered on hysteria among medical care providers afraid of being prosecuted.

Today, almost three years later, federal officials say they know of only one person who has ever been criminally prosecuted for violating HIPAA and there has not been a single civil fine levied against anyone.

That's not just in Berks County, or Pennsylvania.

"There have been no civil monetary fines issued by the Office of Civil Rights," said Patrick Hadley, a spokesman for the U.S. Department of Health and Human Services' Office of Civil Rights. "We have reviewed 17,000 complaints and have cleared 70 percent of those."

The Office of Civil Rights files civil suits in cases of lesser violations. Malicious, largescale violations are prosecuted as criminal offenses and are investigated by the FBI and prosecuted by the U.S. Attorney's Office.

There are no HIPAA police.

Instead HIPAA is enforced on a complaint basis.

Hadley said in order for a health care provider to commit a civil violation of the act, he or she would have to knowingly release private health information although not necessarily maliciously.

"A criminal offense would involve knowingly obtaining protected health information under false pretenses with the intent of selling it," Hadley said.

Richard Manieri, a spokesman for U.S. Attorney Patrick L. Meehan, of Pennsylvania's Eastern District, said there have been no criminal HIPAA violations prosecuted by the Philadelphia office, which covers eastern Pennsylvania and New Jersey.

Douglass R. Hoffman, a former assistant U.S. attorney in the Philadelphia office who now works as a consultant to health care providers, said common sense is the best guide to complying with HIPAA.

Hoffman said the only criminal case he is aware of involved a Seattle cancer clinic worker who used a patient's credit card information to steal \$9,000.

"Here is a case where local authorities would charge identity theft, but a federal prosecutor was able to charge under HIPAA because the man who stole the information was a health worker," Hoffman said.

On Nov. 22, 2004, that defendant, Richard Gibson, 42, pleaded guilty to the HIPAA charges and was sentenced to 16 months in prison, Hoffman said.

In July, the Justice Department issued an opinion limiting HIPAA prosecutions to health providers, insurers and third-party business on the institutional level and exempted

individual health workers.

According to that ruling, individuals such as Gibson would not be prosecuted unless there was evidence they violated the act with the intent to benefit their employer or corporation, officials said.