

I am writing on behalf of the Confidentiality Coalition to comment on the Federal Trade Commission's April 24th public workshop examining competition and consumer protection issues surrounding health information technology.

The Confidentiality Coalition, a broad-based group of hospitals, health plans, pharmaceutical companies, medical device manufacturers, biotech firms, employers, health product distributors, pharmacy benefit managers, pharmacies and medical teaching colleges, was founded to advance effective patient confidentiality protections. For more than ten years, the Coalition has been led by the Healthcare Leadership Council, a health care association which brings together the chief executive officers of the nation's leading health care companies and institutions.

The mission of the Confidentiality Coalition is to advocate policies and practices that safeguard the privacy of patients and health care consumers while, at the same time, enabling the essential flow of information that is critical to the timely and effective delivery of health care, improvements in quality and safety, and the development of new lifesaving and life-enhancing medical interventions.

The Coalition supports efforts by the Congress and the Administration to facilitate the adoption of nationally integrated health information technology (HIT). HIT has the potential to transform our nation's health care delivery system, making possible unprecedented improvement in quality and efficiency.

Within these efforts, the Confidentiality Coalition believes that the confidentiality of patient medical information is of the utmost importance. We must maintain the trust of the American patient as we strive to improve health care quality. Patients' private medical information should have the strictest protection from others outside the medical delivery system and should be supplied only to those necessary for the provision of safe and high quality care.

Since April 14, 2003, confidentiality of patients' medical records has been protected by the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules. The Coalition believes that the HIPAA Rules strike the appropriate balance between protecting the sanctity of a patient's medical information privacy and ensuring that necessary information is available for providing quality health care and conducting vital medical research.

Dialogue on electronic records and the widespread adoption of HIT often raises questions about the privacy and security of electronic health information. We believe it is important to remember that the HIPAA Privacy and Security Rules were implemented in order to protect patient privacy as the health system widely adopted *electronic transactions*. The result is that the HIPAA Privacy and Security Rules include provisions governing the confidentiality of patient medical information, electronic or otherwise.

Covered entities take compliance with the Privacy Rule very seriously and their business associates are required to adhere to the framework outlined in the Rule in order to do

business. As part of HIPAA implementation efforts, covered entities reviewed and redrafted millions of business associate agreements and contracts.

However, not all entities that handle personal health data are covered under HIPAA. The Confidentiality Coalition believes that, to the extent not already provided under HIPAA, the HIPAA Privacy Rule or an equivalent standard should apply to all individuals and organizations that create, compile, store, transmit, or use personal health information.

The Coalition does not believe that wide scale privacy legislation is necessary to protect personal information. Rather, the Coalition believes that the HIPAA privacy and security protections for identifiable information have worked very well to keep patient-identifiable information confidential and that these same protections will work equally well for expanded electronic exchange of clinical information.

As other entities, such as the National Committee on Vital and Health Statistics (NCVHS) have recommended, the Confidentiality Coalition believes that variations in state laws with respect to privacy should be addressed. Disparate laws across states make it costly and difficult for covered entities to comply with all nuances of the laws when data is exchanged across state boundaries.

The Coalition believes that the establishment of a national uniform standard for privacy is a constructive step Congress can take to ensure a sound approach to federal patient privacy by building on the success of HIPAA. Without congressional action to create a single, national privacy standard, medical providers attempting to work together through interoperable health information technology systems would be and are subject to a confusing maze of state laws, rules, and regulations. In the context of HIPAA implementation this has been extremely difficult. In the content of broad and widespread health information exchange it may be nearly impossible.

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. In light of rising health care costs, any new regulatory regimes should be evaluated both for their impact on health care delivery and continued quality as well as their resulting costs.

The Coalition thanks you for the opportunity to comment on the recent FTC workshop.

Sincerely,

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