



NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES

VIA ELECTRONIC SUBMISSION:

<https://public.commentworks.com/ftc/privacyroundtable1>

March 17, 2010

Donald S. Clark  
Federal Trade Commission  
Office of the Secretary  
Room H-135 (Annex P)  
600 Pennsylvania Avenue, N.W.  
Washington, DC 20580

Dear Mr. Clark:

Re: Privacy Roundtables – Comment, Project No. P095416

The National Association of Chain Drug Stores (NACDS) appreciates the opportunity to comment on consumer privacy with respect to the Federal Trade Commission's (FTC) Privacy Roundtable discussions.

413 North Lee Street  
P.O. Box 1417-D49  
Alexandria, Virginia  
22313-1480

NACDS represents 154 traditional drug stores, supermarkets, and mass merchants with pharmacies – from regional chains with four stores to national companies. NACDS members also include more than 900 pharmacy and front-end suppliers, and over 70 international members from 24 countries. Chains operate 37,000 pharmacies, and employ more than 2.5 million employees, including 118,000 full-time pharmacists. They fill more than 2.5 billion prescriptions annually, which is more than 72 percent of annual prescriptions in the United States. The total economic impact of all retail stores with pharmacies transcends their \$815 billion in annual sales. Every \$1 spent in these stores creates a ripple effect of \$3.82 in other industries, for a total economic impact of \$3.11 trillion, equal to 26 percent of GDP. For more information about NACDS, visit [www.NACDS.org](http://www.NACDS.org).

We are concerned about the Medical Prescriptions data flow chart that was developed for the first roundtable on December 7, 2009. We ask that FTC review this flowchart and amend it to prevent a potential misinterpretation of the data flow between a pharmacy and a pharmacy analytics company. The flow chart may lead a reader to conclude that pharmacies routinely sell prescription data to pharmacy analytics companies, when in fact, this rarely if ever occurs. Where and if it occurs, a pharmacy would follow the HIPAA privacy regulations and obtain consumers' authorization.

To be clear, pharmacies may sell *de-identified* data to data analytics companies. This type of transaction, however, would not be appropriate to include in the consumer data flow chart because de-identified data is not consumer data. The fact that the data has been de-identified means that a consumer cannot be identified by the data. The most common purpose for the sale of de-identified data is to make available physician prescribing data. Physician prescribing data has many important uses. This data is used by the private sector and government entities to promote health quality, improve health care provider performance,

(703) 549-3001

Fax (703) 836-4869

[www.nacds.org](http://www.nacds.org)

and reduce health care costs. Many public policy initiatives would not be feasible without the availability of this data, such as:

- Interoperable health IT systems -- for automated quality improvement measures to be successful, specific care episodes must be traceable to the provider involved
- FDA drug safety and risk management programs and patient safety database development
- Comparative effectiveness research, quality reporting, and value based payment systems
- CMS price and quality reporting and pay-for-performance programs
- DEA prescription drug diversion programs to combat illicit use of medications

Additionally, pharmacies may contract with data analytics companies to perform services on behalf of the pharmacy; this includes services that are considered treatment, payment or health care operations under the HIPAA privacy regulations. Under these circumstances, the data analytics company would be a business associate under the HIPAA privacy regulations. As a business associate, the data analytics company would be subject to the HIPAA privacy regulations and would not be able to use or disclose the data in any way that the pharmacy could not. Moreover, as FTC is aware, the HITECH Act applies security and privacy regulations directly to business associates as if they were covered entities.

We ask FTC to consider our comments and amend the Medical Prescriptions data flow chart to remove the line showing a flow of consumer data from pharmacies to pharmacy analytics companies. Since the FTC flow charts will be used to create policy, we believe it is critical that the flow charts are completely accurate and would not lead to incorrect assumptions.

Finally, as a general matter, we urge FTC to consider the extensive privacy and security regime created by HIPAA and extended by the HITECH Act and not to pursue policies or regulations that would duplicate existing provisions.

Please do not hesitate to contact us if we can provide further assistance. I can be reached at 703-837-4183 or [knicholson@nacds.org](mailto:knicholson@nacds.org).

Sincerely,

A large black rectangular box redacting the signature of Kevin N. Nicholson.

Kevin N. Nicholson, R.Ph., J.D.  
Vice President, Pharmacy Advisor  
Government Affairs and Public Policy