



VIA ONLINE SUBMISSION

February 18, 2011

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

Re: Medco Health Solutions, Inc. Comments on “Protecting Consumer Privacy in an Era of Rapid Change”.

Dear Sir or Madam,

Medco Health Solutions, Inc. (“Medco”) appreciates this opportunity to offer comments on the Federal Trade Commission’s (FTC) Preliminary Staff Report entitled “Protecting Consumer Privacy in an Era of Rapid Change: A Proposed Framework for Businesses and Policymakers”.

In this response, we (i) provide background on Medco’s business model and our data collection and use practices with respect to patient and consumer-level data and (ii) offer comments on various aspects of the Preliminary Staff Report. As a general matter, we support many of the principles identified in the Staff Report that will encourage a broader range of businesses to develop and implement good overall privacy practices. As discussed below, we concur with the Confidentiality Coalition, whose comment letter we have endorsed, that most of these practices are already incorporated into the HIPAA framework that governs privacy and security issues for the healthcare industry and its service providers. Because these principles already have been implemented by the healthcare industry, it is our view that the FTC should not become involved in the regulation and oversight of health information to the extent that these areas are already regulated, in substantial detail, by the HIPAA structure. The proposed framework should be limited to those areas that are not regulated under the existing HIPAA structure and should not create or impose duplicative or inconsistent standards for healthcare companies and their service providers that are already subject to the details of the HIPAA framework.

1. Background on Medco’s Role in Healthcare delivery

Medco is a leading healthcare company that provides services to approximately 65 million members. Medco provides clinically-driven pharmacy services designed to improve the quality of care and lower total healthcare costs for private and public employers, health plans, labor unions and government agencies of all sizes, and for individuals served by Medicare Part D Prescription Drug Plans.

Our programs and services help control the cost and enhance the quality of prescription drug benefits. We accomplish this by providing pharmacy benefit management (“PBM”) services through our national networks of retail pharmacies and our own mail-order pharmacies. In 2009, Medco administered 695 million prescriptions, including 103 million prescriptions dispensed via Medco pharmacies.



In our role as a manager of the prescription benefit, we are a business associate of health plan clients which are covered entities under HIPAA. As the largest of the prescription benefit managers, we serve as a business associate for a significant number of plans and provide access to the prescription benefit to over 65 million individuals. Our obligations are defined not only by business associate agreements, but by extremely detailed PBM Service Agreements, many of which run 40 pages to well over 100 pages detailing the services we are to perform and the respective responsibilities of the parties.

Medco's pharmacy operations are covered entities under HIPAA. Our mail service pharmacies dispense over 103 million prescriptions per year to members and dependents covered under the health plans Medco serves as a business associate. In addition, Medco has two other subsidiaries engaged in pharmacy operations. Accredo Health Group dispenses specialty drugs from three primary dispensing pharmacies and over 70 branch pharmacy locations throughout the country to patients who are engaged in therapy regimens for rare and chronic diseases. Liberty Medical Supply, the nation's leading supplier for individuals living with diabetes, provides diabetes supplies and other durable medical equipment, as well as prescription drugs, to an additional 1.2 million patients.

All of these operations are directly subject to the extensive HIPAA regulations on privacy, security and transmission of protected health information.

In addition, through its subsidiary, the Medco Research Institute™, Medco engages in evidence-based research focused on closing the gap between scientific discovery and medical practice for improved patient outcomes and lower overall healthcare costs. Medco has the unique ability to conduct its research in a "real life" setting, where patients comprise a representative sample of the population and are subject to a real-life environment. Working together with government organizations, academia and industry, Medco Research Institute performs research and studies that help foster the development of new technologies, programs, or regulatory warnings that improve the delivery of pharmacy care to patients and reduce the overall cost of their pharmacy and medical care. The research and studies conducted by Medco Research Institute are conducted in conformance with the HIPAA regulations and receive IRB review and approval where appropriate.

Finally, through its subsidiary, Medco CHP, LLC, Medco operates an online retail drugstore, the Medco Health Store, which is available both to individual members of Medco's PBM clients who have elected to include the Medco Health Store as part of their benefit and to the general consumer public.

Our services include activities that require extensive use of patient data, and as a result, Medco commits significant financial and human resources to the development and implementation of systems and processes designed to help us comply with HIPAA and other privacy requirements. This commitment extends to all of our subsidiaries as well as to our vendors and sub-contractors with whom we share PHI.

2. Discussion

Medco acknowledges the increasingly complex environment in which individuals' personal data is collected and used in both online and offline contexts. We



endorse the FTC's consumer protection advocacy and are pleased that the Preliminary Staff Report will prompt more attention on privacy and security practices from those business sectors that are not currently governed by the extensive statutory and regulatory requirements that are so integral to the health care sector, generally, and Medco in particular.

Medco's business model requires both communication with individuals and collaboration with retail pharmacies, physicians, the Centers for Medicare & Medicaid Services ("CMS"), pharmaceutical manufacturers and, particularly in specialty pharmacy, collaboration with state Medicaid agencies and other third-party payors, such as health insurers. Service to our patients and the management of the prescription drug benefit cannot occur without sharing patient health information among the entities involved with the delivery of the benefit.

As we described above, Medco's commercial operations, whether acting as a business associate or as a covered entity, are all undertaken within the HIPAA framework. The HIPAA regulations encompass a comprehensive set of requirements that protect individuals' information in paper, electronic and oral forms. The HIPAA rules capture many of the elements included in the FTC Report, such as notice of what information is being collected, choice as to how such data is used, means to access that information and stringent security practices and procedures. These safeguards have become even more rigorous with the enactment of the HITECH Act which imposes new obligations on health care entities and provides for enforcement action by HHS as well as state Attorneys General.

Accordingly, Medco joins in the recommendation, voiced by the Confidentiality Coalition and others, that there is no need for the FTC to alter or supplement the existing HIPAA framework. The FTC's final report should acknowledge that certain commercial business sectors, such as health care, are governed by sufficiently rigorous laws and regulations and focus its recommendations on those commercial contexts not covered by such comprehensive privacy and security laws and regulations.

3. Conclusion

Medco commends the FTC on its continued commitment to protecting consumer privacy. We appreciate the opportunity to contribute to your efforts by sharing our thoughts and experiences regarding the practical effect of the Privacy Framework on our business. We would be pleased to provide further information or to consult with the FTC on our views and are available to assist the FTC in the event there are any comments or questions about this letter. We welcome the opportunity to work with you.

Sincerely,

Daniel C. Walden
SVP, Corporate Compliance and Privacy Officer