

Health Information Compliance Alert

Health Information News YOU CAN'T TAKE YOUR HIPAA WITH YOU ...

... Or can you? Experts studying the portability of health insurance coverage under HIPAA claim that few Americans can be assured they'll retain their former employer's health coverage if they leave their jobs.

There are "serious limitations" to the Health Insurance Portability and Accountability Act's effectiveness when it comes to making HIPAA portable for those who lose health coverage resulting from job changes, according to a Nov. 25 brief by New York-based research group the Commonwealth Fund.

The brief [is](#) authored by Economic and Social Research Institute president Jack Meyer and The Severyn Group Inc.'s vice president Larry Stepnick [and](#) analyzes both HIPAA and the Consolidated Omnibus Budget Reconciliation Act as each regulation pertains to portability of health care coverage.

The brief finds that HIPAA's provisions facilitate the retention of comparable health care coverage for most Americans who begin a new job [or](#) who change or lose their jobs [but](#) the reg falls far short of "meeting the goal of offering full portability to most Americans."

The brief notes that HIPAA's portability provisions are intended to assist individuals, particularly in two situations: It helps people who start new jobs with an employer that offers health care coverage; and it assists those who either leave a job that provided coverage who aren't seeking new employment or people who find a job that doesn't offer coverage.

But HIPAA "falls well short" of providing full portability of coverage, the authors claim. Practically speaking, few employees can take their coverage with them when they change employers or become unemployed.

For those who take a new position that doesn't offer insurance, HIPAA guarantees some type of coverage, but there's no assurance that one's new health plan will offer the same benefits or similar terms relating to out-of-pocket expenses and provider choice, among other disadvantages.

To read the brief, go to http://www.cmwf.org/programs/insurance/meyer_hipaacobra_ib_569.pdf

- A Minnesota state judge ruled Dec. 1 to permit the state's Health Department to collect medical records on almost every state citizen, according to the Associated Press. Administrative law judge Allan Klein agreed with the Minnesota Health Department that collecting medical data would aid researchers who study disease clusters throughout the state, a decision that came as a shock to groups who feel the ruling means patient privacy in the state has hit a brick wall.

But an official with the Health Department said the risk to patient privacy is minimal compared to the benefits that would result from greater access to medical records.

The ruling provides for the creation of a huge database to track the quality of health care in the state. The database would include information such as individuals who had a stroke or an abortion, as well the specific medications taken by patients, the AP reports.

Klein said there was no way to reconcile the disparate perspectives and desires among privacy advocates and the Health Department, but admonished the Department to take the appropriate steps to protect patient privacy.

Health officials claim the information gathered in the database would enable them to improve the quality of health care. They say patient identifiers would be deleted or encrypted before the data leaves the Department for any purpose.

- Gov. Jesse Ventura must wrestle with a tough decision while still in office [and](#) whether to approve or reject a request

from the Minnesota Department of Health to begin collecting medical information in hospitals and clinics for every citizen.

While health officials say that all names and addresses would be encrypted in order to protect a patient's confidentiality, governor-elect Tim Pawlenty said Dec. 6 he was "very concerned" with the prospect of collecting confidential medical data and expressed concerns particularly relating to appropriate safeguards for the information.

Officials say the information would be of great benefit for various reasons, including disease prevention and cost containment, according to the St. Cloud Times.

Those officials claim that records would be collected and delivered to the department on encrypted computer disks, and that those computers would not be networked with any others.

Individual identifiers such as a person's name, address and city would be masked, but zip codes would remain available, presumably to aid researchers in determining consistency of illnesses on a regional basis.

But some critics remain unmollified. According to one report, Ventura has yet to make a decision on the request. Ventura's spokesman, John Wodele, said that while the governor has made no decision, he remains "supportive" of the Health Department's goals.

Governor-elect Pawlenty was less ambiguous: "I don't like what they're proposing. I want to make sure there are absolute safeguards" in place to protect patient confidentiality, the Star Tribune reports. Pawlenty added that current privacy laws are already too lenient as they apply to the collection of personally identifiable information.

- Eli Lilly is back in court. Three former employees of Eli Lilly & Co. have filed a defamation suit against the pharmaceutical behemoth Dec. 11, claiming they were fired in an effort by the company to cover up a management plan that violates patient privacy while it boosted Prozac sales through unsolicited mailings.

The lawsuit was filed in Broward Circuit Court and seeks \$15,000 in damages. The suit alleges that the plan had corporate support and had been used at least three times before, according to the Associated Press.

The lawsuit also alleges that Indianapolis-based Eli Lilly intended to revive sales of the antidepressant drug by encouraging current users of Prozac to switch from a daily pill that lost its patent last year to a weekly, patented form.

Additionally, the suit claims that Tom Riga, a Lilly employee who helped to develop the program, was promoted to an executive position as a reward for his work.

According to the text of the lawsuit, the program had doctors write letters to patients suggesting the switch to the weekly pill. The former would send prescriptions and coupons for a free one-month supply to pharmacies. The pharmacies would then mail the drug to patients, including the letter from their personal physician, the AP reports.