

Health Information Compliance Alert

HIPAA Privacy: MARKETING CHANGES WORRY HIPAA ADVISORY PANEL

The **National Committee on Vital and Health Statistics** has weighed in on proposed changes to the Health Insurance Portability and Accountability Act's privacy rule and the verdict is mixed.

In an April 25 letter to **Health and Human Services** Secretary **Tommy Thompson**, NCVHS Chairman **John Lumpkin** praises many of the proposed modifications, including the plan to eliminate the requirement that covered entities obtain a patient's consent before releasing protected health information for treatment, payment or health care operations.

"The consent form would likely become simply another piece of paper for a patient to sign without much thought or discussion," opined Lumpkin.

The advisory committee also threw its support behind many of the suggested modifications to the privacy rule's research provisions. However, it opposed the proposal that would require covered entities to disclose any remuneration that could flow from obtaining an authorization only in those cases where the authorization was for marketing. As NCVHS read the proposed rule, that would allow research sponsors to pay covered entities to enroll patients in trials without forcing the entities to disclose such payments at the time they requested the patient's authorization.

"We believe that the issue of remuneration is a material fact of which potential research participants have a right to know," Lumpkin wrote.

The committee also voiced serious concerns about proposed modifications to the privacy rule's marketing provisions. While those modifications would still require a patient's authorization before their PHI is disclosed for marketing purposes, they would also alter the definition of "marketing." Under the new definition a communication is marketing only if it "encourages" recipients to purchase or use a particular product.

That new definition worries the NCVHS, which fears that marketers could bypass privacy requirements by either crafting their pitches to be "merely informational," or by presenting their messages as an encouragement for the recipient to tell other people about their product.

The committee also recommended that HHS:

1. require marketers disclose to the people they contact how they obtained their identity or protected health information;
2. standardize and simplify how people could opt-out of future marketing contacts; and
3. restrict the methods of marketing so that protected health information is not inadvertently released through unattended faxes, voice mail or other unsecured avenues.

To see the letter go to <http://ncvhs.hhs.gov/020425lt.htm>.