

# Health Information Compliance Alert

## Litigation: HHS SCORES VICTORY IN HIPAA PRIVACY CHALLENGE

A federal judge in South Carolina has shot down an effort by a coalition of physicians to have the Health Insurance Portability and Accountability Act privacy rule declared unconstitutional and otherwise legally infirm.

In an Aug. 14 ruling, U.S. District Judge **Terry Wooten** granted the **Department of Health and Human Services** motion to dismiss the case. While Wooten noted that the plaintiffs in *South Carolina Medical Association v. HHS* (No. 3:01-2965-25) made "important" points that he couldn't "lightly dismiss," he ultimately determined that the HIPAA privacy rule passes muster under the U.S. Constitution and the separation of powers doctrine.

SCMA maintained in particular that HIPAA's preemption provision which holds that if a state law offers "more stringent" privacy protections than HIPAA, the state law will supercede HIPAA was so impermissibly vague that it violates the Constitution's Fifth Amendment due process guarantee. A "person of ordinary intelligence is unable to determine whether state privacy regulations are more stringent than" the HHS rule, the complaint says.

The court, however, didn't buy that argument and essentially held that providers ought to be able to clear the murk through their own HIPAA compliance efforts. "Those who routinely handle health information, and who must undertake privacy regulation training, should be able to understand and apply the language" governing HIPAA preemption, Wooten ruled. Moreover, since the HIPAA rule requires providers to appoint privacy officers, Wooten concluded that HIPAA-covered entities would have their own in-house experts on the subject.

The SCMA is studying the viability of an appeal.