

Health Information Compliance Alert

Privacy: AIDS ACTIVISTS TO DHHS: WERE BENT ON CONSENT!

While the **Department of Health and Human Services** debates the pros and cons of trashing the consent provision of the privacy rule, privacy groups and AIDS activists are screaming over the necessity of the provision.

Privacy advocates across the nation are fuming over the proposal in the HHS' March 27, 2002 notice of proposed rulemaking to kill the consent requirement of the privacy rule. At the heart of the debate are AIDS activists and those who suffer from mental health diseases, groups who say consent is vital to ensure a patient's rights to medical privacy. Conversely, some of the country's major health organizations charge the requirement is superfluous and needlessly burdensome.

The **American Hospital Association** issued a question-and-answer memo to help hospitals respond to inquiries from patients and the public about the rule. Patients concerned about whether they'll be aware of their medical rights without signing a consent form elicit the response, "hospitals are still required to provide you with a written notice of their privacy practices that explains how hospitals are permitted to use your medical information." The AHA argues that the "privacy notice" is just as valid and protective of a patient's medical information as the consent.

While that may sound fair to some, others aren't buying the AHA's answer. **Jeff Crowley**, project director of the Washington-based **Institute for Health Care Research and Policy**, feels there's a subtle but real difference in the efficacy of consent versus a notice. "It might sound like a small [difference], but I think the way it could translate in an actual clinical setting could be very significant," he says.

Crowley tells **Eli** that many patients will be given a privacy notice and won't take the time to digest the material, since that sheet "might be mixed in with 50 others that talk about your health care coverage." He believes a consent is different because "you're given a form where you have to sign it, and in order to get health care, you need to read it, understand it, and sign it."

Crowley believes some AIDS patients or others with debilitating diseases might even resist seeking health care because they aren't sure how their medical information will be used. He adopts a better safe than sorry approach: "Without having to sign [a privacy notice], I don't think we really know they'll get one."