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United States Senate

COMMITTEE ON HEALTH, EDUCATION,
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

April 24, 2003

The Honorable Tommy Thompson
Secretary
United States Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, DC 20201

Dear Secretary Thompson:

I am writing to bring to your attention serious concerns that have been raised by many providers of vital health care services, including state Medicaid agencies, about the impact of the medical privacy rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). I strongly support the Department's adherence to the April 2003 compliance date and am pleased that implementation efforts are proceeding. However, given the prescriptive enforcement standard set forth in HIPAA and other factors outlined in this letter, I seek assurance that the Department will make every effort to prevent potential disruptions in care. Specifically, I request that you take immediate action to publicly assure providers and other covered entities that the medical privacy rule will be enforced in a reasonable, non-punitive manner and that special consideration will be given to the rule's most complex requirements for which the Department has provided no formal guidance.

As you know, both the scope and the complexity of the privacy rule are unprecedented. Virtually every provider in the country is covered by the rule from the largest hospital system to the smallest rural pharmacy. The rule requires that providers create new systems or procedures or make alterations -- sometimes very significant and costly alterations -- to existing ones in order to be in compliance. For example, according to the National Committee on Vital and Health Statistics (NCVHS), tens of millions of acknowledgment of privacy notices will need to be developed by providers, picked up and signed by patients and recorded or stored securely by providers.

In addition, many important changes to the privacy rule were not finalized until August 2002, which seriously delayed compliance efforts. I commend HHS for making important changes to the privacy rule to prevent foreseeable delays in patient care and to promote quality improvements. However, the unforeseen delay in finalizing those changes also delayed compliance efforts, including training and evaluating whether state law requirements were preempted or otherwise affected by HIPAA.

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In a letter to you in September 2002, the NCVHS related many of these same concerns. Based on public hearings, NCVHS reported finding "high levels of confusion and frustration" among providers with the medical privacy rule. They also determined that "implementation of the Privacy rule is undoubtedly more difficult than with typical regulations" and called for an immediate and massive public education and technical assistance programs. NCVHS concluded with the warning that "widespread disruption of the health care system" appeared likely.

Health care organizations and States are devoting substantial resources towards implementation of the privacy rule. For instance, many health care organizations have pooled their resources to conduct an initial comprehensive state preemption analysis to foster smoother implementation. I encourage HHS to similarly invest the resources necessary for smooth implementation and to assist the private-sector with these efforts. However, given the April 14th compliance date, I believe that it is also necessary to supplement public education and technical assistance programs with a stated enforcement policy that reassures the regulated community that HHS will hold them to reasonable standards.

I urge you to give special consideration to assuring providers that those portions of the medical privacy rule that are the most complex and confusing, such as tracking health reports to public health agencies, among other provisions, will not be the target of any enforcement action until the Department issues additional technical assistance to the field.

In a time of such enormous pressure on health care providers to respond to national priorities, including disaster readiness, it is important that the Department help providers understand and implement this very complex medical privacy rule.

I thank you in advance for your assistance. Please feel free to contact me or Kim Monk on my staff (224-0623) if you have any questions.

Sincerely,



Judd Gregg
Chairman

JG/km