



**Statement of the
American Hospital Association
before the
Committee on Health, Education, Labor & Pensions
of the United States Senate
on
Medical Privacy Regulations**

April 16, 2002

The American Hospital Association (AHA) and its nearly 5,000-member hospitals, health systems, networks, and other providers are committed to safeguarding patients' medical information and ensuring that patients understand and have appropriate access to their medical information. We believe Congress shared these goals when it enacted the Health Insurance Portability and Accountability Act (HIPAA) in 1996. Unfortunately, the final regulations implementing that vision elevated bureaucracy above common sense in a number of crucial respects.

Before the Administration proposed changes last month, the rule's most alarming provision for hospitals and our patients was the requirement that patients read, review and return a 10-page privacy notice and a separate consent form before they could be cared for. Hospitals were deeply distressed by visions of parents with sick or injured children being met at the hospital door not with care and compassion, but with a lengthy privacy notice that had to be read, and a consent form that had to be signed, before care could be provided for the child. Yet, that is precisely what the medical privacy regulations required hospitals to do.

Make no mistake – hospitals are genuinely committed to ensuring that patients know how their medical information is being used, what their rights are and how they can exercise them. That is not up for debate. What is up for debate is whether the current medical privacy regulations enhance medical privacy or frustrate it by delaying care for patients. The current privacy rule prohibits patients and their physicians from scheduling any testing procedures, outpatient surgery or other care the government determines isn't an emergency until the patient (1) receives and reads their privacy notice, and (2) signs and returns the consent form to the hospital. For hospitals, the answer is clear: the written consent requirement will frustrate patients and providers to no necessary end.

To test consumer reaction to these written consent requirements, the AHA commissioned an independent research firm, Market Strategies, to poll more than 900 consumers this month about their reaction to the way hospitals were required to implement the consent requirement under the medical privacy regulation. Here's what consumers told them:

- 86% think asking a sick person to sign a legal document that could be 10 pages when they see a doctor, nurse or pick up a prescription at the pharmacy is an unnecessary burden.
- 85% agree that elderly Americans will be hurt the most because they see many different physicians and often have someone else pick up prescriptions for them.
- 84% believe that time spent in a doctor's office should be spent on patient care, not filling out more paperwork.
- 77% agree that the government should not make hospitals wait to schedule tests until the patient reads the privacy notice and signs and returns a consent form to the hospital.

The April poll confirms what the AHA had learned earlier this year from a series of four focus groups that Market Strategies conducted in Tampa and St. Lois. When apprised on the written consent requirements, consumers said:

“This will be a paperwork nightmare.”

“They should simply require that hospitals and pharmacies post this [privacy notice], but signing a form is ridiculous.”

“I’ve waited two hours to see the doctor and he’s got to do all this?”

The recent announcement by the Department of Health and Human Services (HHS) that it was proposing to replace redundant written consent requirements with a written acknowledgment came as welcome news. That proposal does not weaken, much less eliminate, any of a patient’s privacy rights. It does not change the fact that hospitals are not permitted to use patients’ information for marketing or research, without their express written permission. Instead, it allows hospitals to immediately work with patients and their doctors to provide or schedule medical treatment or tests. Hospitals are still required to try and obtain written acknowledgment from a patient that he or she has received the privacy notice, but they can do so when it’s convenient for the patient – not the government. Moreover, asking patients to acknowledge in writing that they have received the hospital’s privacy notice signals to patients that the notice contains important information that they should read and understand.

Hospitals welcome the proposed change because we care for and about patients – we want all of our patients to be met at the hospital door with care and compassion, not paperwork and delay. Written acknowledgement will let us keep that promise.

Many lawmakers agree. On July 3, 2001, 165 members of the House of Representatives sent a bi-partisan letter to HHS Secretary Tommy Thompson telling him that “scheduling patients for surgery, x-rays or other vital services should not depend on patients having to complete an exhaustive privacy and consent form that could be 10-or-more pages long.” HHS responded by replacing redundant written consent with written acknowledgement, which eliminates a barrier to patient care.

CONCLUSION

A top priority for America's hospitals is safeguarding patient privacy while ensuring that nothing gets in the way of patient care. HHS' proposal to replace the redundant written consent requirement with patient acknowledgement removes one of the privacy rule's key roadblocks to the delivery of good patient care. It is good for patients and hospitals and does not sacrifice patients' privacy rights.

WHY WRITTEN ACKNOWLEDGEMENT IS BETTER FOR PATIENTS AND PROVIDERS

As a result of HHS's proposed changes to the HIPAA privacy rules, the AHA has prepared a series of Qs & As to help hospitals respond to inquiries from patients and the public.

1. ***Will I know what my rights are if I don't have to sign a written consent form for hospitals to use my health information?***

Yes. Hospitals are still required to provide you with a written notice of their privacy practices (called a "privacy notice") that explains how hospitals are permitted to use your medical information. Hospitals are permitted to use your medical information for only three purposes: (1) treating you; (2) obtaining payment for your care; and (3) for their own operations, including improving their ability to provide quality care to you and other patients. **Hospitals are not permitted to use your medical information for any other purpose, such as for marketing or research, without your written permission**, except in a medical emergency or other very limited circumstances, such as those permitted or required by federal and state law.

The privacy notice explains your medical privacy rights, such as your right to see and copy your information or request to change that information. It also tells you, for example, where you need to go to see and copy your information or to request to change it.

2. ***Doesn't signing a written consent form make it more likely that I will learn about or understand my privacy rights?***

No. The privacy notice you will receive from the hospital - not the written consent form - explains your privacy rights. The written consent form didn't provide any additional information that isn't already in the privacy notice. Under the changes proposed, hospitals will be required to have you acknowledge in writing that they have given you their privacy notice. Hospitals want patients to know and understand their medical privacy rights. And by having you acknowledge that you were given a copy of their privacy notice, hospitals are letting you know that the privacy notice has important information that you need to read and understand.

3. ***Will I be losing any of my privacy rights if I'm not required to sign a written consent form?***

No. None of your privacy rights will be lost. Your rights are guaranteed by the rule and by the notice, whether or not you sign a consent form. For example, you will still have the right to request that the hospital not contact you at the office with any test or medical results, but only call you at your home.

4. ***Was there something wrong with having patients sign a written consent form?***

Yes. Hospitals could not work with you or your doctor to schedule any testing procedures, outpatient surgery or other care the government determined wasn't an emergency until you (1) received and read their privacy notice, and (2) signed and returned the consent form to the hospital. Hospitals were not allowed to make any exceptions to this rule, even for disabled or elderly Americans or those who lived in remote rural areas. Hospitals were very concerned that their ability to respond quickly to the needs of their patients would be hampered by this unnecessary requirement and that patients would be frustrated with them because they were not allowed to make exceptions to this federal law.

5. ***Will the hospital be able to use my health information in ways that are not approved by the federal privacy rule if I don't sign a written consent form for the use of my information?***

No. The rules continue to obligate hospitals to use your health information **only** for (1) treating you; (2) obtaining payment for your care, and (3) for their own operations, including improving the quality of care they provide to you and other patients. Hospitals must explain the ways they will use your health information in the privacy notice they have to give to you. A hospital cannot use or disclose your health information in other ways, such as for marketing or research, unless the hospital gets your written permission before doing so.

6. ***Is a hospital prevented from getting my written consent to use my health information?***

No. Hospitals and doctors are still permitted to ask for your written consent before they use information about you to provide health care services; however, if they use a written acknowledgement, they won't have to delay providing care for you until you (1) received and read their privacy notice, and (2) signed and returned the consent form to the hospital or doctor.

7. ***Will hospitals know that I received their privacy notice if I don't have to sign a written consent?***

Yes. The proposed changes to the privacy rules require hospitals to have you acknowledge, in writing, that you received their privacy notice. At the time you receive the notice, the hospital will ask you to acknowledge in writing that you received the notice.

8. ***Will this new proposal requiring me to acknowledge that I have received the privacy notice mean that I'm spending more time filling out forms in the hospital admission office or emergency room?***

No. Signing an acknowledgement should not increase the time you have to spend in the admission process. In an emergency situation, this acknowledgement can even be delayed to allow you to give it at a less stressful and more convenient time.

9. ***Why is a written acknowledgement that I received the hospital's privacy notice better than the requirement that I sign a written consent?***

The written acknowledgement allows hospitals to **immediately** work with you or your doctor to treat you or to schedule any testing procedures, outpatient surgery or other care. In an emergency situation, hospitals can even delay getting your written acknowledgement until a less stressful and more convenient time for you. The acknowledgement does not take away any of your privacy rights. And it is still an effective way for hospitals to let you know that the privacy notice they give to you has important information about your privacy rights that they want you to read and understand.

The written consent requirement, on the other hand, forced hospitals to delay scheduling any testing procedures, outpatient surgery or other care or giving you any treatment the government determined wasn't an emergency until you (1) received and read their privacy notice (which could be as long as 10 pages in order to meet federal requirements), and (2) signed and returned the consent form to the hospital or doctor. Hospitals were not allowed to make any exceptions, even for disabled or elderly Americans or those who lived in remote rural areas. The written consent requirement increased the paperwork burden for patients and hospitals without giving you any new privacy rights that the rule and the privacy notice doesn't already guarantee or any additional information about your rights that isn't already in the privacy notice.

10. *Do the proposed changes to the privacy rules affect any of my privacy rights?*

No. The proposed changes to the privacy rules do not do away with or weaken any of your privacy rights. Your rights continued to be guaranteed. The proposed changes **only** get rid of a significant roadblock that would have forced hospitals to delay your treatment until you (1) received and read their privacy notice, and (2) signed and returned the consent form to the hospital or doctor, and cut the unnecessary paperwork burden for patients and hospitals.