



December 19, 2008

The Honorable Harry Reid  
Office of the Majority Leader  
United States Senate  
S-221 Capitol Building  
Washington, DC 20510-7020

The Honorable Nancy Pelosi  
Office of the Speaker  
United States House of Representatives  
H-232 Capitol Building  
Washington, DC 20515

Dear Majority Leader Reid and Speaker Pelosi:

The Confidentiality Coalition would like to commend the 110<sup>th</sup> Congress on its efforts to pass legislation promoting the widespread adoption of health information technology (HIT). We know that considerable disagreements remain surrounding how best to address this as evidenced by the many different bills that have been crafted over the past two years. But we also agree that HIT will need to be a crucial part of our health care delivery infrastructure if proposals to improve the efficiency, affordability, accessibility, and quality are to succeed. We likewise truly value your continued commitment to this important issue.

As Congress works to craft economic recovery legislation for President-elect Obama to sign into law after taking office early next year, there has been significant discussion that the legislation may include HIT provisions along with some related to the privacy and security of health information. Ensuring that patients trust in HIT and can be assured that their personal health information is kept confidential and secure is a goal shared by all members of this coalition.

However, we are extremely worried that some privacy provisions that have been proposed would have a negative impact on the quality and safety of our health care system and counteract the positive benefits of HIT and any economic stimulus effect. Among those proposals on which we have previously registered, our utmost concerns include:

- **Accounting of Disclosures.** Requiring covered entities or users of electronic medical records to maintain an accounting of all non-oral disclosures of personal health information for the purposes of treatment, payment, and health care operations. While many entities that hold protected health information today have certain capabilities that allow them to track many types of uses and disclosures, even the most sophisticated health providers would struggle to maintain compliance with this costly and bureaucratic requirement.
- **Consent for Treatment, Payment, and Health Care Operations.** Requiring covered entities or users of electronic medical records to obtain consent for uses or disclosures for the purpose of providing treatment, furnishing payment, or conducting health care

operations. Such a requirement inhibits patient safety efforts and movement toward value-based purchasing and other fundamental components of the next generation of our health care system.

- **Unnecessary notification of breach.** Requiring holders of personal health information to notify individuals of breaches of personal health information regardless of whether or not the breach poses a reasonable risk of substantial harm. Without such a risk-based standard, a notification requirement would not discriminate between serious and significant events that require the subject's attention and action and those which are virtually meaningless.
- **Health care operations.** Modifying health care operations and using the receipt of remunerations to determine what communications constitute marketing. Many covered entities employ third parties to prepare and send important communications to patients, such as appointment and prescription refill reminders, which would be prohibited by these provisions.
- **New rights of action.** Creating an individual private right of action or authority for state attorneys general to enforce the HIPAA Privacy Rule. State attorneys general already have existing authority to enforce state privacy laws and increased jurisdiction over federal privacy laws would create no additional guarantee of compliance with the rule.

We, like you, understand that medical and health privacy is a complex issue with no easy solution. We thus caution you against including these types of provisions in an economic recovery package that will need to be enacted quickly and decisively. Doing so could have many unintended consequences on our health care delivery system and a negative impact on patients.

We look forward to working with you during the 111<sup>th</sup> Congress on this issue and other facets of health care reform.

Sincerely,



Mary R. Greal,  
President  
Healthcare Leadership Council for the Confidentiality Coalition

cc:

The Honorable Members of the 110<sup>th</sup> Congress of the United States