

**RIGHT TO MEDICAL PRIVACY TO BE ELIMINATED  
UNDER REGULATIONS ISSUED BY  
U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**March 7, 2003**

April 14, 2003 marks the final compliance date for final amendments to the Health Information Privacy Rule issued by the Department of Health and Human Services that will eliminate the right possessed by citizens since the founding of the country to not have their personal health information used or disclosed without their consent. That right of medical privacy has traditionally been protected by the U.S. Constitution and more recently by a right of consent contained in the original Privacy Rule which became effective April 14, 2001.

The amendments to the Privacy Rule make two changes in the federal right to privacy which are unprecedented in the nation's history.

**Amendments Repeal the Right of Consent**—Throughout the history of the country citizens have enjoyed the “fundamental right” to not have their personal health information used or disclosed without their consent. This right to medical privacy has been recognized as a core part of the right to liberty protected by the Constitution. The right of consent also was protected by the original Privacy Rule which became effective on April 14, 2001. This fundamental privacy right is being repealed by the amendments to the Privacy Rule which have an effective date of October 15, 2002 and a final compliance date (the date by which all covered entities must be in compliance) of April 14, 2003.

**“Regulatory Permission” Granted by Federal Government For Use And Disclosure of Personal Health Information**—The amendments provide blanket “regulatory permission” by the federal government for private entities and individuals to use or disclose virtually all personal health information for the purposes of treatment, payment or health care operations, regardless of the citizens' wishes. 67 Fed. Reg. at 53,211. This action creates a dangerous precedent under which the federal government could provide “regulatory permission” for the waiver of other fundamental rights of citizens.

**Practical Impact of the amendments—The End of Medical Privacy**

- (1) **Consent eliminated**--Personal health information can be used and disclosed without the individual's knowledge or consent.
- (2) **Individual's wishes ignored**-- Personal health information can be used and disclosed even over the individual's objection and against the individual's will.
- (3) **Rights eliminated retroactively**--Personal health information that has been disclosed to a physician in the past with the understanding and expectation that it would remain private can be used or disclosed without the citizen's knowledge or consent.

- (4) **Federal permission**--The blanket "regulatory permission" granted by the federal government creates a presumption that all medical information is available for use and disclosure unless the consumer can assert some state law or standard of medical ethics to rebut the presumption.
- (5) **Consumers rendered powerless**--Consumers are powerless under the amendments to prevent the use or disclosure of communications with health care professionals in the past, present or future. The amendments permit the use and disclosure of protected health even if the individual pays out of pocket or never seeks another health service after the compliance date of the amended Privacy Rule.
- (6) **Disclosures to unqualified entities**—The amendments permit disclosures of identifiable health information to private entities known as "business associates" that do not have to comply with the privacy protections of the Rule for up to a year after the compliance date.

The amendments to the Privacy Rule will provide government permission for over 600,000 entities and literally millions of employees and "business associates" nationwide to use and disclose the personal health information of "virtually every American". 66 Fed. Reg. at 12,739.

The loss of medical privacy will create a barrier to quality health care. The original rule found, based on numerous surveys and studies, that patients who are concerned about medical privacy will avoid seeking necessary care and not provide accurate or complete information for diagnosis and treatment. 65 Fed. Reg. at 82,468 Accordingly, the original Privacy Rule concluded that "Privacy is necessary to secure effective, high quality treatment." 65 Fed. Reg. at 82,468

As the original Privacy Rule noted, "...few experiences are as fundamental to liberty and autonomy as maintaining control over when, how, to whom, and where you disclose personal material." 65 Fed. Reg. at 82,464-65. It is this fundamental right that will be eliminated by the amendments to Privacy Rule.

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