



February 13, 2004

National Committee on Vital and Health Statistics
Subcommittee on Standards and Security
Hubert H. Humphrey Building, Room 705A
200 Independence Avenue, SW
Washington, DC 20201

Dear Subcommittee Members:

On behalf of the National Health Council and its members, which includes more than fifty of the nation's leading voluntary health agencies (VHAs) that represent nearly 100 million Americans with chronic diseases and disabilities, as well as other membership categories including professional and membership associations, nonprofit organizations with an interest in health, and business and industry, we would like to take this opportunity to voice our strong support for protecting patient privacy and the confidentiality of patients' medical records. We understand that you are preparing to issue recommendations to the Department of Health and Human Services (HHS) with respect to a Proposed Claims Attachment Rule to the Health Insurance Portability and Accountability Act of 1996 (HIPPA), and its subsequent regulations, commonly referred to as the "Privacy Rule."

As you know, medical records may contain information patients would prefer not to share with their health insurers. In fact, patients will pay out of pocket when they do not want that information shared with their insurer, and assume that absorbing this cost will protect them.

As the Privacy Rule is currently written, this type of information remains confidential. A health care provider may only disclose the minimum amount of health information necessary to accomplish the purpose of the disclosure. (45 CFR Sec. 164.502) Under the minimum necessary standard, a health care provider generally may not disclose an entire medical record except when there is a specific justification for doing so. (45 CFR Sec. 164.514)

We understand that in proceedings addressing the Claims Attachment Rule there have been requests that HHS adopt a rule that would seriously undermine this aspect of the Privacy Rule. Some parties in the health care industry are urging that the XML standard be adopted as the standard for health claims attachments. This format would permit a health care provider to turn over an entire document or record containing the health information about which a health plan may be inquiring.

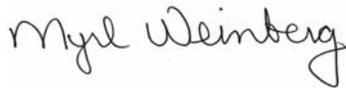
This approach would seriously undermine the protections afforded in the minimum necessary standard of the Privacy Rule by giving the health plan access to information which is not necessary for it to determine payment. It would easily expose information related to

treatment for which patients have paid out of pocket with the expectation that it would not be shared with their health plan.

We urge you to strongly consider the consequences of allowing such a standard to be adopted. The Privacy Rule was put into place precisely to protect patient confidentiality and shield sensitive medical records from insurers and others who are in a position to use such information in a discriminatory manner. Allowing providers to send a patient's entire medical record under the protection of the minimum necessary standard is in direct conflict with the spirit of the Privacy Rule.

Thank you very much for your consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Myrl Weinberg".

Myrl Weinberg, CAE
President