

Renewing Our Commitment to Confidentiality

[Save to myBoK](#)

by Dan Rode, MBA, FHFMA

With renewed interest in privacy and security, a renewed role for HIM.

Confidentiality has been an HIM domain ever since the profession recognized and accepted Hippocratic responsibilities to keep health information secure. Pre-HIPAA, HIM professionals were responsible for establishing regulations that would provide appropriate confidentiality for patient information and records. Post-HIPAA, HIM professionals led many of the successful efforts to properly implement privacy and security policies to comply with HIPAA.

This year has seen the emergence of new confidentiality issues, and once again HIM professionals must step up and respond.

HIPAA Erosion

In April AHIMA's privacy and security survey reported a slight erosion in overall compliance with the privacy and security rules. Respondents noted a decrease in resources for HIPAA compliance activities and a loosening of staff attitudes.

AHIMA's survey was not alone in pointing out this trend. Whether these findings will result in more resources and a renewed effort from all healthcare professionals remains to be seen, but the message is out that the HIPAA privacy and security rules need attention. Consumer trust in HIPAA compliance will affect acceptance of other industry efforts that involve personal health information.

A verbal report from the Office for Civil Rights (OCR) to the National Committee on Vital and Health Statistics (NCVHS) in September found no significant misuse or problem disclosures for most HIPAA covered entities. OCR reported that more than 22,000 HIPAA privacy complaints had been received by August 31 of this year. Of that amount, 75 percent have been closed or resolved without a penalty or conviction. Some point out that the high closure rate demonstrates the industry and OCR's ability to modify practices and abide by HIPAA, while others say that the rules and process are not strict enough.

Of the almost 40 cases that OCR has referred to the Justice Department, only two have resulted in actual prosecution to date. OCR reported that in the near future it will concentrate its compliance efforts on two areas of the rule: access and amendments to patient records. OCR also indicated that it will soon have its database completed and will provide more detailed information on complaints and resolutions.

Barriers to Health Information Flow

In September the National Center for Health Statistics (NCHS) reported to a joint meeting of NCVHS and its board that it was experiencing problems with some states reporting their vital health statistics. The challenges come from state laws that have been written without regard to the reporting and disclosure of morbidity and mortality data. In some cases state laws allow disclosure of data to NCHS but do not allow NCHS to release data to others.

NCHS staff expressed concern that, with the shift toward electronic exchange of health information, NCHS, the Centers for Disease Control and Prevention, and various public and population agencies would not be able to continue their responsibilities if collected data can no longer be used.

Media reports of missing laptops at the Veterans Health Administration and the Census Bureau, along with other privacy breaches at insurers and health providers, haven't helped build the public's confidence in the industry's ability to keep information private and secure. Few of these breaches have resulted in identity theft or public disclosure of records, but the threat is there, and stories about laptop recoveries seem to get less attention than those about the initial loss.

Privacy barriers have not gone unnoticed by those designing our future electronic health records (EHRs) and health information exchange (HIE). In the fall of 2005, the Office of the National Coordinator for Health Information Technology (ONC) issued a contract to the Research Triangle Institute (RTI) to look at the differences in privacy and security rules, regulations, and practices among the states. Today 33 states have contracted to work with RTI on this project, but a report is not expected for several months.

In Congress, House health IT bill HR 4157 has a similar provision for a study of privacy and security among the states and resulting recommendations for Congressional action. To date this legislation languishes in Congress, waiting for a potential health IT conference bill.

After a year of hearings on privacy and a health information infrastructure, the NCVHS subcommittee on privacy and confidentiality published "Privacy and Confidentiality in the Nationwide Health Information Network." The report provides some interesting definitions as it tackles the role of individuals in privacy and confidentiality. It outlines 26 recommendations on an individual's rights to control the use of his or her data and access in EHRs and HIEs.

A month later, the American Health Information Community, determining that confidentiality, privacy, and security were issues that could prevent its "breakthrough" projects from moving forward, established a task force to address the concern. The task force, which includes AHIMA president Jill Callahan Dennis, JD, RHIA, began meeting in August. In September the group focused on some of the more technical aspects of confidentiality, such as secure messaging, authentication, and identity proofing.

AHIMA and the American Medical Informatics Association (AMIA) also addressed the issues raised by confidentiality in an electronic era. In July, the two associations approved a joint position statement on health information confidentiality. The statement looks at the process of confidentiality and the individual as well as the need for HIE.

The associations provide 11 principles that identify the roles of anyone who accesses or stores personal health information (not just HIPAA entities). While many of the principles echoed past experience under HIPAA, some identify the post-HIPAA implementation issues of EHRs, HIE, and personal health records, as well as personal or protected health information that may reside or be handled outside of HIPAA entities. AHIMA and AMIA's work also reflects previous work that was done in conjunction with Connecting for Health's Common Framework, which was published in April.

Answering the Call for Privacy

As many of the previous projects dedicated to confidentiality have reported, there must be an educated public, industry, and government with a common understanding of the concepts of confidentiality and the systems proposed. We must understand what needs individuals have regarding the safety and use of their personal health information, just as individuals must understand how the system-business practices and electronic systems work and how it can operate under the level of privacy they seek.

HIM professionals have much to offer to this discussion on confidentiality and HIE. No other profession has as much experience in working with various practices, laws, and regulations as those in HIM. Likewise the profession has been a leader in developing the functional EHR and understands the issues associated with the exchange of health information. If progress is to be made, it must be in building the practices, regulations, and laws that can allow for EHRs and HIEs, while at the same time building consumer trust.

To build this new system on top of what we have there must be dialogue-and HIM professionals are certainly in a position to initiate and participate in this dialogue. AHIMA has been at the table for the discussions above; state HIM associations have already begun to reach out to consumers on the issue of PHRs. These same community dialogues could begin a common understanding of the future of health information and the role of confidentiality. This same discussion must occur in the healthcare industry and with state and federal government.

We are not starting from scratch. We have much to build on, and some changes to make. AHIMA will keep you posted on future developments and steps.

Dan Rode (dan.ode@ahima.org) is AHIMA's vice president of policy and government relations.

Article citation:

Rode, Dan. "Renewing Our Commitment to Confidentiality." *Journal of AHIMA* 77, no.10 (November-December 2006): 18,20.

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.