

Controversial changes to patient privacy rules

Bush administration scraps Clinton-era written consent forms

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WASHINGTON, March 21 — Doctors could disclose patient information without written permission and parents would get more access to their children's records under revisions to medical privacy rules announced Thursday by the government.

Health care providers welcomed the changes, while the American Medical Association and activists criticized the removal of a written consent form from the Clinton-era rules.

THE FIRST comprehensive federal protections for health privacy, which will take effect in April 2003, will apply to nearly every patient, doctor, hospital, insurance plan and pharmacy in the nation.

They were developed under former President Clinton and allowed to go forward last year by the Bush administration, which at the same time promised changes. It was these revisions that were announced Thursday.

The rules prohibit health care providers from disclosing patient information for reasons unrelated to health services, and set civil and criminal penalties for violators. They give patients the right to inspect and copy their records and to ask for corrections.

Written consent, not now required, would have been necessary under the Clinton rules to disclose patient information even for routine matters such as treatment and payment.

The Bush revision does away with that requirement, saying providers must notify patients of their privacy policies. Also, doctors, hospitals and others who directly treat patients must make a "good-faith effort" to get written acknowledgment from patients that they have been notified.

The changes also make clear that incidental releases of private information are permitted — a conversation at a hospital nurses' stand or names listed on a sign-in sheet at a doctor's office, for example.

"These are common-sense revisions that eliminate serious obstacles to patients getting needed care and services quickly while continuing to protect patients'

privacy," Health and Human Services Secretary Tommy Thompson said in a statement.

DOCTORS, ACTIVISTS RAISE CONCERN

Health care providers welcomed many of the changes.

But the American Medical Association, which had urged the federal government to make the consent requirement less burdensome for doctors, joined privacy advocates who opposed eliminating the consent form requirements.

“We knew it had to be fixed. Just to remove it completely is a serious problem,” said Dr. Donald Palmisano, the AMA’s secretary-treasurer.

Janlori Goldman, who directs the Health Privacy Project at Georgetown University, said that “it’s really unfortunate that HHS is proposing to eliminate the consent requirement.”

“If people don’t know what their rights are,” Goldman asked, “how are they going to protect themselves?”

HEALTH PROVIDERS’ TAKE

Business groups said the consent forms add to paperwork, and federal officials said they are not very meaningful because people who did not sign the form could — and probably would — be denied care anyway.

HHS officials said the forms would have been a burden for people being treated in emergency rooms and could have caused problems for those who have prescriptions called into pharmacies and picked up by family or friends.

“The forms would have been a paperwork hassle without providing any additional privacy rights or protections for patients,” the American Hospital Association said in a statement.

But Sen. Edward Kennedy, D-Mass., said consent forms were “a core part” of the rules.

The rules still allow minors to retain privacy rights specifically granted under state law.

The Clinton rules said minors who have the right under state law to access to mental health, substance abuse, abortion or other services without parental approval should retain that right if they seek those services.

Under the Bush revision, minors would not have the right to privacy from parents in these cases except when state law explicitly allows it.

“It’s a real step back,” Goldman said. “Anything that creates a barrier to teen-agers getting services is a problem.”

MARKETING CHANGES

The Bush regulation also clarifies the rules concerning marketing of products to patients. Personal information cannot be sold or given drug companies or others wanting to market a product or service without patient permission.

Doctors, hospitals and insurance companies can communicate with their patients about benefits, new treatments and products without permission as long as the information is meant to benefit a patient's treatment.

The revised rules will be published next week and are subject to a 30-day public comment period before becoming final.

The revisions and other background are online at www.hhs.gov/ocr/hipaa.

The Associated Press and Reuters contributed to this report.