

HIPAA: Its Good Intention Requires Good Handling

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Abstract

There is no doubt that ambiguity and shadiness in the mechanism of health insurance sector have been distressing the millions of consumers till Health Insurance Portability and Accountability Act (HIPAA) came into being in 1996. But with HIPAA, a new set of problems have surfaced that too can harass the consumers in more than one way. Alongside, its complex nature still creates doubts in the consumers mind about its efficacy, though the Act itself has undergone many changes to meet the demand of the modern time, or Health and Human Services (HHS) is taking punitive measures against the offending companies. Amid this situation, this study explores and discusses the nuances of the Act and various observations from many learned quarters, before coming into conclusion that the Act needs to empower the consumers to bolster them, besides presenting a simplified version of the act.

Keywords: Health Insurance, HIPAA, Health care access, portability, and renewability, Healthcare Fraud and Abuse, health plan requirements.

1 Introduction

The issue of health insurance has been growing in significance in wake of the growth of senior citizens all across America and from this perspective the importance of the Health Insurance Portability and Accountability Act (HIPAA), enacted in 1996, has equally risen as one of the potent instrument to maintain the health of the working community of America under any circumstance. It works in tandem with Privacy Rule that was issued by the U.S. Department of HHS, where it addresses the use and disclosure of individuals' health information under the surveillance of "Office for Civil Rights" [1]. Therefore, this paper briefly explores the nuances of the same, before reaching its own conclusion.

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2 Literature Review

2.1 Summary of the Policy

The Health Insurance Portability and Accountability Act (HIPAA) came into being with its enactment by the U.S. Congress on August 21, 1996, which covers all possible issues related to maintenance of health insurance coverage for the workers and their families under variable circumstances, like shift or loss of job. With a central theme of ensuring proper healthcare to the working community, the entire pack of this Act has evolved through various stages, before coming up with a final modification on August 14, 2002 and attaining a comprehensive shape under five major titles, which covers the following areas:

Title I: Health care access, portability, and renewability

Title II: Preventing health care fraud and abuse; administrative simplification' medical liability reform

Title III: Tax related health provisions

Title IV: Application and enforcement of group health plan requirements

Title V: Revenue offset

2.2 Background

The HIPAA Act is voluminous, which contains about 74,000 words. Why not, in course of time several issues regarding health insurance commanded consistent attention under viable framework, as mentioned below.

2.3 Access to Health Care

It covers several important issues like defining the "preexisting condition", States' capacity to implement alternative health reform schemes, or regular reforms. For example, it clearly defines preexisting condition as "A condition (whether physical or mental), regardless of the cause of the condition, for which medical advice, diagnosis, care, or treatment as recommended or received within the 6-month period ending on the enrollment date", or states that a person can be denied health insurance coverage for 12 (18 months for a late enrollee) months for a preexisting condition (Sec 701). It also addresses possible complex situation like "Genetic information shall not be treated as a condition.. in the absence of a diagnosis of the condition related to such information"(Sec. 701). Understandably, such directives can be instrumental to clear the ambiguity in the process of providing and earning healthcare on personal capacities.

2.4 Fraud and Abuse

Both caregiver and receiver can be the victim of the same and thus HIPAA provides pathway to resolve such cases by issuing directives, like what could be the primary activities to be conducted by DHHS under the Medicare Integrity Program (Sec 202), or whether the individuals be paid for reporting healthcare fraud or for providing suggestions (Sec. 203). It even explains the legal standard for conviction of health fraud as a result of transferal assets to obtain eligibility for medical assistance (Sec. 217).

It provided the effective date of new fraud provisions from January 1, 1997 (Sec. 218), which stands to benefit many, besides framing the project costs regarding beefing up health care fraud and abuse enforcement, under Sec 201, which covers the following processes:

- Prosecuting health care matters (through criminal, civil, and administrative proceedings)
- Investigations
- Financial and performance audits of health care programs and operations
- Inspections and other evaluations
- Provider and consumer education.

According to a reference [2], the FBI is appropriated \$434 million to the year 2002 for this program, while DHHS and the Attorney General are appropriated \$104 million in 1997, with increases of 15% until the year 2003.

2.5 Tax-Related Provisions

This area directly affects all workers and here too HIPAA comes up with certain solutions, like Medical Savings Accounts makes it into the law (Sec. 301), or long-term insurances will be treated as health and accident insurance (Sec. 321) and long-term care services will be treated as medical care for tax purposes (Sec. 322). Apart from the above, it also explains the issues like settlements for terminally individuals, by prescribing that they will be treated the same as insurance payments made on the death of the insured (Sec. 331), or in the case of finding the way to make the public aware of the critical need for organ and tissue donors, where it directs that information on organ and tissue donations will be included with all income tax refund payments under the new law.

3 Discussion

No matter whatever the projected intention of HIPAA is, it has been facing stiff criticism from many quarters right from its inception and incubation period. Several published articles over the years corroborate this fact. As for example, reference [3] expressed concern that HIPAA compliance could cost dearly, where he observed that the "proposed rules covering privacy are especially controversial," as the "critics are especially concerned about the complexity and costs of compliance as well as provisions governing disclosure." He also observed that some healthcare analysts are anticipating the changeover would turn out costlier and time consuming, besides putting up examples of what could be the outcomes of penalties proposed in the Act.

It drew criticism from the House Majority Leader Dick Arme y (R-Texas), who sent a letter to the Health and Human Services Secretary, Tommy G. Thompson [4], where he outlined his concerns on the privacy aspects of the HIPAA, and said, "The proposed HIPAA regulations, however, may actually have the opposite effect, putting private personally identifiable at greater risk than exists today." But the most arresting comment of his letter was, "The federal government certainly hasn't earned a reputation of trustworthiness in the handling of medical records or in safeguarding Internet privacy sufficient to justify the proposed regulation." To substantiate his claim, Arme y cited the survey report, which showed "97% of federal government Web sites failed to meet the

privacy standards recommended by the Federal Trade Commission for commercial Web sites."

Around the same period, reference [5] talks about the ripple effect caused by HIPAA among companies who suddenly discovered that they are far from meeting the specifications of HIPAA and how that made the companies or its staffs reluctant to provide the relevant data.

However, the latest criticism [6] observes that law is too lenient to adequately protect privacy of the patients that mentions about a sort of "revelation" where the employees of the University of California-Los Angeles Medical Center looked at the private medical reports of high profile and celebrity patients. It also observes that since the enforcement of the law, about "34000 reports of privacy violations have taken place, and investigations were launched into 9000 cases, and of which 6000 resulted in corrective measures."

It quotes the observations of the privacy advocates who believe that the law should be revised to empower the patients to specify who can access their private medical information, or who cannot. All of the criticisms point either at the fear of identity theft or at the complexity of its mechanism. Understandably, the concept of digitally converting the sensitive information regarding one's physical and mental condition has not gone down well with many, who view this as a scope to some marketers to do business with them [7].

However, HHS Department has the responsibility make people aware of their staff stance regarding such issues, as not many people know about the recent instance of a Seattle company dishing out \$100,000 for violating HIPAA [8] in which they compromised health records of more than 386,000 patients.

Apart from these, the observations of the responsible chairs in this sector should be aired more by the proponents of HIPAA. It helps, when someone learns about the views of Deven McGraw, the director of the Health Privacy Project, who observes that "Consumers want the benefits of HIT (health Information Technology)-enabled healthcare and they want assurances that their privacy will be protected" [9].

The complexity associated with HIPAA should also be cleared. Admitted, the Act has to cover a huge bulk of issues of complex nature, yet, there should be some simplified interpretation for the consumers to attract them. According to the press report, HIPAA's privacy and security regulations are "so complex that, for practical purposes, the federal government is not enforcing them" [10].

4 Conclusion

The literature review and discussion together show that there is both merit and demerit for the common people. Merit wise, they stand to gain by the national standard set by HIPAA for accessing and handling medical information, or to feel empowered to customize and access their own medical records, or for that matter file a complaint against the healthcare provider.

On the other hand, they are bound to feel helpless on many accounts, as they don't have any control over their private information, which can be used for marketing, where they cannot take any legal action for violation of privacy.

4.1 Recommendations

The above situation commands a thorough review of the Act and there should be clear-cut directives against any commercial usage of such private information. HIPAA should make distinction between a U.S. business associate and the ones from the rest of the world. Alongside, the consumers should be empowered to review the amount of information, to authorize and consent on the issues/situations that they cannot do at present. Besides these, there should be compulsory training programs for people on how to effectively utilize HIPAA, and for that matter a simplified version of the Act should be presented to the consumers.

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