

Update on Federal Health Issues

Mary Beth Senkewicz

Senior Counsel
for Health Policy

National Association of
Insurance Commissioners

October 9, 2000

Primary Issues



- ◆ Patient Protections
- ◆ Health Information Privacy

Patient Protection Legislation



- ◆ S. 1344
- ◆ H.R. 2990

Three Major Differences Between the Bills



- ◆ Scope of the Legislation
- ◆ Health Plan Liability
- ◆ Access Provisions

Most of S. 1344 only applies to self-funded plans.

Exceptions:

- ◆ Plan information (all group plans)
- ◆ Grievance and appeal process (all group plans)
- ◆ Genetic information (all plans)
- ◆ Mastectomy length of stay (all plans)

Scope



- ◆ H.R. 2990 applies to all group health plans and health insurance issuers.
- ◆ Uses the HIPAA model - “prevents the application” standard.

Health Plan Liability



- ◆ S. 1344 - Keeps the current standard under ERISA. No additional liability for health plans.
- ◆ H.R. 2990 - Amends ERISA to allow for additional health plan liability.

Access Provisions



- ◆ Both S. 1344 and H.R. 2990 include tax changes and Medical Savings Accounts (MSAs).
- ◆ In addition, H.R. 2990 includes:
 - ◆ Association Health Plans (AHPs)
 - ◆ HealthMarts
 - ◆ Community Health Organizations

Senate Conferees

Republicans

- ◆ James Jeffords (VT)
- ◆ Judd Gregg (NH)
- ◆ Bill Frist (TN)
- ◆ Michael Enzi (WY)
- ◆ Tim Hutchinson (AR)
- ◆ Don Nickles (OK)
- ◆ Phil Gramm (TX)

Democrats

- ◆ Ted Kennedy (MA)
- ◆ Christopher Dodd (CT)
- ◆ Tom Harkin (IA)
- ◆ Barbara Mikulski (MD)
- ◆ Jay Rockefeller (WV)

House Republican Conferees

- ◆ Bill Archer (TX)
- ◆ Michael Bilirankis (FL)
- ◆ Thomas Bliley (VA)
- ◆ John Boehner (OH)
- ◆ Dan Burton (IN)
- ◆ Ernie Fletcher (KY)
- ◆ Porter Goss (FL)
- ◆ Nancy Johnson (CT)
- ◆ Jim McCrery (LA)
- ◆ Joe Scarborough (FL)
- ◆ John Shadegg (AZ)
- ◆ James Talent (MO)
- ◆ Bill Thomas (CA)

House Democratic Conferees

- ◆ Robert Andrews (NJ)
- ◆ Marion Berry (AR)
- ◆ William Clay (MO)
- ◆ John Dingell (MI)
- ◆ Frank Pallone (NJ)
- ◆ Charles Rangel (NY)
- ◆ Pete Stark (CA)
- ◆ Henry Waxman (CA)

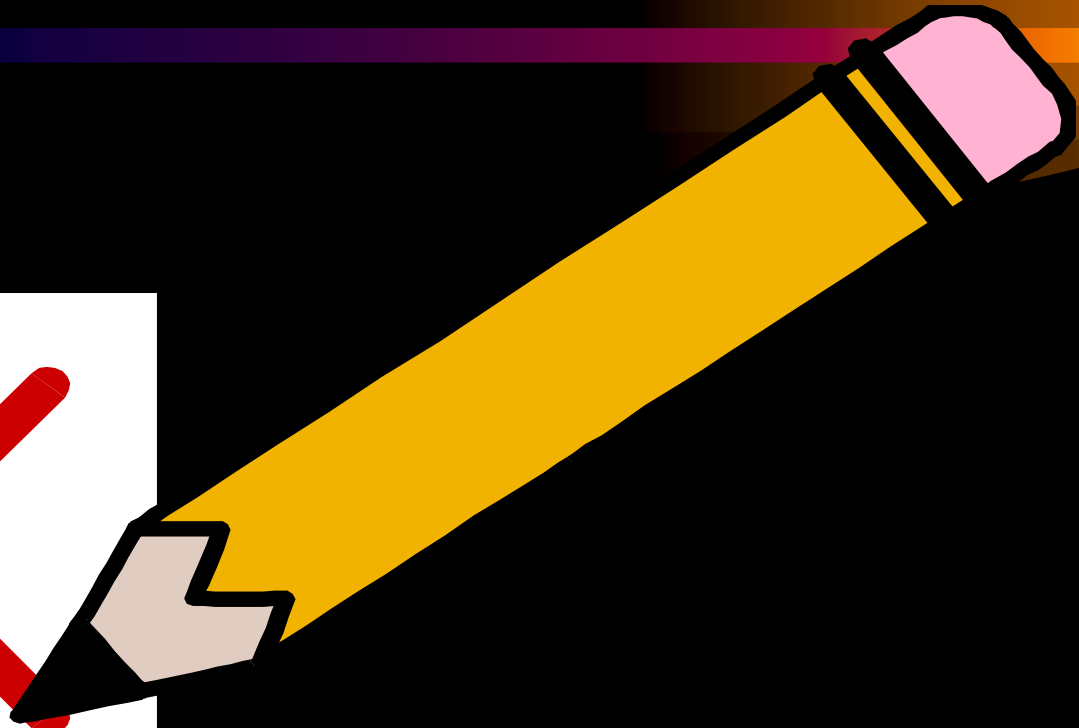


NAIC Position



- ◆ Preemption
- ◆ Enforcement
- ◆ Realistic time frames
- ◆ “Access” Provisions

Prognostication



Health Information Privacy

- ◆ The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required Congress to pass legislation by August 21, 1999.
- ◆ If Congress failed to act, the Department of Health and Human Services (HHS) was required to issue a regulation by February 21, 2000.

Congressional Activities

- ◆ Three bills were introduced in the Senate. The Senate HELP Committee drafted a fourth bill (not officially introduced) for use in committee debate and markup.
 - ◆ S. 573, S. 578, S. 881
- ◆ Five bills were introduced in the House, with at least one other bill being drafted.
 - ◆ H.R.s 1057, 1941, 2402, 2455, 2470

Congressional Action Fails



- ◆ Unresolved Issues:
 - ◆ Scope and Preemption of State Laws
 - ◆ Privacy Rights of Minors
 - ◆ Private Right of Action
- ◆ Mark-up sessions postponed indefinitely.

HHS Health Information Privacy Regulation



- ◆ Proposed regulation published November 3, 1999.
- ◆ Comment period extended until February 17, 2000 (50,000+ comments received).
- ◆ Similar structure and elements as seen in the federal bills, but with limited applicability.

Applicability of Regulation

- ◆ Only applies to health plans, health care clearinghouses and health care providers.
- ◆ Only applies to electronic records, not paper records.
- ◆ Recognizing its jurisdictional limitations, HHS requests that Congress enact comprehensive legislation.

Preemption of State Laws

◆ General Rule:

A provision of state law that is contrary to a requirement of the regulation is preempted.

◆ Exceptions:

Three categories of state laws are saved from preemption, even if they are contrary to the regulation.

Three Categories of Exceptions

- ◆ State laws requiring a determination by the Secretary of HHS that they are necessary for certain purposes.
- ◆ State laws that are more stringent than the federal requirements.
- ◆ State laws that are carved out or exempted from the regulation.

Exceptions - Category 1

State laws requiring a determination that they are necessary:

- ◆ to prevent fraud and abuse.
- ◆ to ensure state regulation of health plans.
- ◆ to address state reporting requirements for health care delivery or costs.
- ◆ to improve the Medicare and Medicaid programs and/or the health care system.
- ◆ to address controlled substances.

Category 1 (continued)

- ◆ Problems with Determination Process:
 - ◆ Overly burdensome process for the states.
 - ◆ State law preempted until determination made by Secretary of HHS.
 - ◆ No time frames for HHS to act.
 - ◆ States have to re-apply for exemption every three years.

- ◆ NAIC Solutions

Exception - Category 2

State laws that relate to the privacy of individually identifiable health information but are more stringent than the federal requirements (“federal floor”).

- ◆ Advisory opinions
- ◆ Clarification

Exception - Category 3

State laws that are explicitly carved out or exempted:

- ◆ Public health laws.
- ◆ Laws requiring health plans to report information for audits, program monitoring and evaluation, licensure or certification.

Other Issues

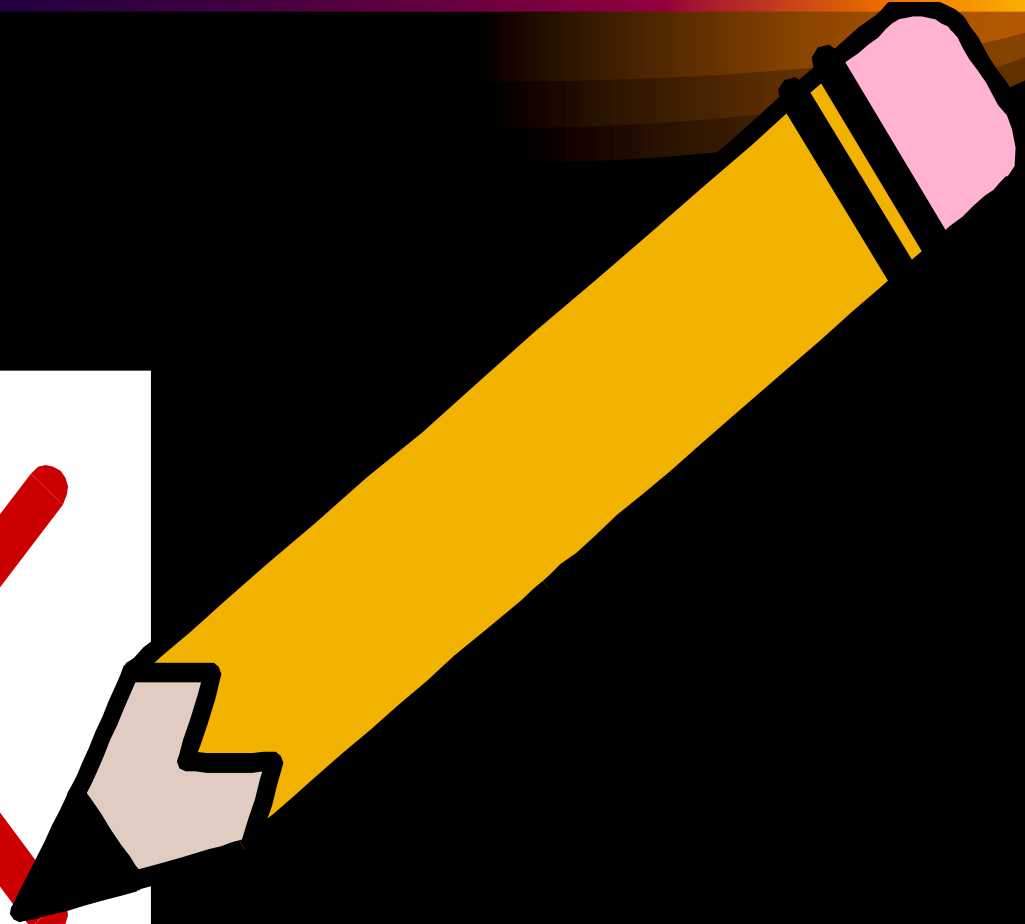


- ◆ Classification of Insurance Departments
- ◆ Permitted Versus Required Disclosure

NAIC Position

- ◆ Equivalent or stronger state laws should not be preempted, including state laws that are broader in scope.
- ◆ Protections should apply to all insurers and to all protected health information (electronic and paper).
- ◆ State regulators should not be hindered in their legal responsibilities to regulate health plans and protect consumers.

Prognostication

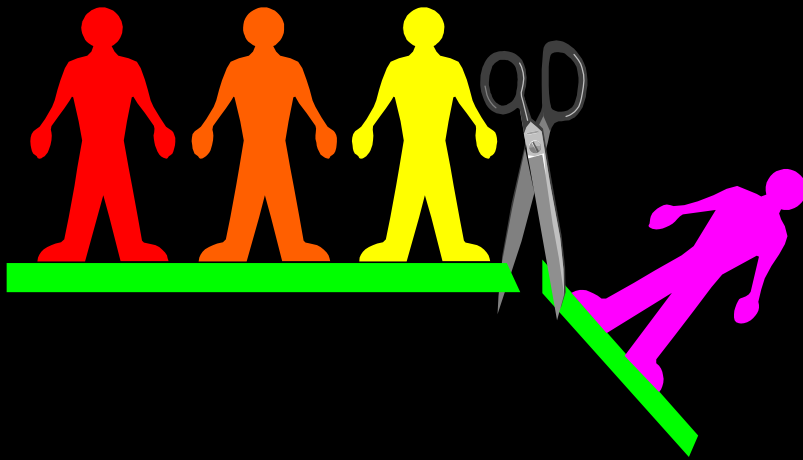


Other Congressional Health Issues



- ◆ Uninsured
- ◆ Medicare Reform - Prescription
Drugs
- ◆ Medical Errors
- ◆ Antitrust

Medicare Reform



- M+C
withdrawals
- provider
giveback
legislation
- NAIC Medigap
review

Prescription Drugs

- Administration/Gore/Democratic proposal: voluntary benefit under Medicare
- House Republican proposal: drug-only insurance policies
- Senate Finance (Sen. Roth)/Bush proposal: interim immediate help for low-income seniors through state grants

Conclusion

- ◆ Congress will continue to feel pressure to act on health care issues.
- ◆ Even with the current federal debate, states will continue to enact health care reforms that are tailored to their particular marketplaces.

Federal Agencies



- Health Care Financing Administration (HCFA)
- Administrative simplification
- other HIPAA issues

Administrative Simplification

- HIPAA required standards and requirements for electronic information
- published August 17, 2000 at <http://www.gpo.gov> or <http://aspe.hhs.gov/admnsimp/>.
- Compliance date Oct. 16, 2002 for large plans, 2003 small plans (<\$5 million annual receipts)

Administrative Simplification

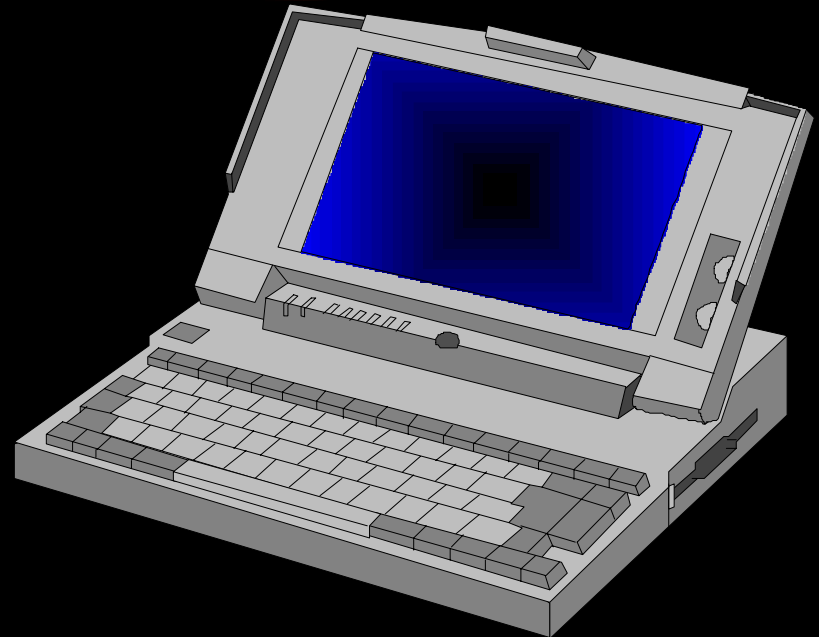
cont'd

- Sets standards for 9 electronic data interchange transactions
- applies to health care providers, health plans, and health care clearinghouses
- providers not required to submit electronic claims, but if they do must comply
- does not directly affect DOI but may affect other state agency such as Medicaid

Administrative Simplification

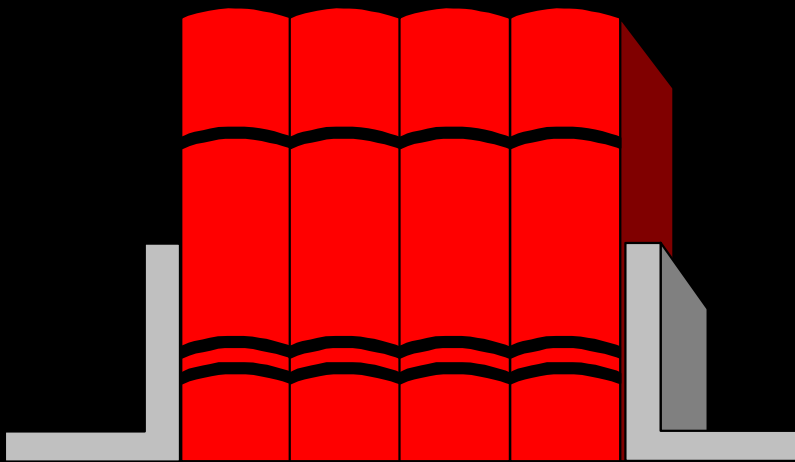
cont'd

- WEDI - Workshop for Electronic Data Interchange
- SNIP (Strategic National Implementation Process) Task Group
- NAIC will forward info



Other HIPAA issues

- Forthcoming rules
- bulletins



Forthcoming Rules



- Antidiscrimination
- Final rule (interim rule issues April 1997)

Bulletins

- Group Size Issues (Sept. 1999)
- Nonconfinement Clauses (March 2000)
- State succeeding carrier laws (Aug. 2000)
- prior bulletins: secondary and continuing coverage and eligible individuals (both June 1999)

Department of Labor

- Claims processes proposed rule still outstanding
- waiting to see if PBOR passes
- state concerns about relationship to state laws/regulations

