

“One Sentence To Save Health Care Privacy Rights”

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The debates over national health care and computerized medical records have left out one simple sentence that would resolve a fundamental problem: how to uphold the ethical requirement that patients have the right to consent (or not) to the use and disclosure of their medical records.

The requirement for privacy and consent in medicine is as old as the Hippocratic Oath and as modern as most medical codes of ethics. The problem now is that ethics are not encoded into federal law. Neither HIPAA nor the current national health care legislation requires patient consent for using medical records. In fact, HIPAA requires only a *notice* of how information is used, not patient consent. National health care mandates that doctors computerize patient records. Recent proposals to link physical and mental health record further heighten the dangers. Together these can undermine ethical imperatives.

There is a very simple one-sentence solution. HIPAA and national health care legislation need to be amended to include the single statement: “Patients’ consent is required for the use and disclosure of their medical records.”

Though perhaps best introduced as amendments to HIPAA or to national health care legislation, this sentence could be appropriately placed in any medically-related bill.

While the driving force behind this improvement should be the ethical need for our government to be as good as our people, there are other reasons to protect patient consent. First, a foundation of trust as the basis for the doctor-patient relationship is in itself therapeutic. Trust is enhanced when patients have confidence that their most private medical information will be used only for purposes to which they have consented. That trust between patient and provider, along with encouraging the sharing of information, can improve the likelihood of positive medical outcomes. Erosion of that trust is bad medicine and poor health policy.

Second, awareness that patient confidentiality is not currently protected, because consent is not required, leads large and growing numbers of patients to practice “Privacy Protective Behavior” (PPB). In short, they hide health information from those who provide their health care. According to California Health Care Foundation surveys, about a fifth of all patients keep some health information from their doctors and pharmacists. Although revealing this information to physicians could lead to more timely and accurate diagnosis, patients rightly fear that it could also lead to their losing insurance coverage or even a job.

Moreover, a vast amount of our national medical costs could be saved if people were encouraged to share information more fully with their providers. This would produce better diagnoses and treatments. It would cut down on medical errors. People who are reluctant to reveal symptoms except in a crisis--when their conditions are more dangerous and costly to treat--would be encouraged by the assurance of privacy to get care sooner and less expensively. In short, whereas concerns about lack of privacy can drive up costs and lead to less effective care, protecting privacy by seeking patient consent is both ethical and cost-effective.

The simple solution for protecting medical privacy is to insert even a single sentence in national legislation stating that patients' consent is required for the use and disclosure of their medical records. The benefits for ethics, personal health, and the health of the body politic would be abundant and therapeutic.

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