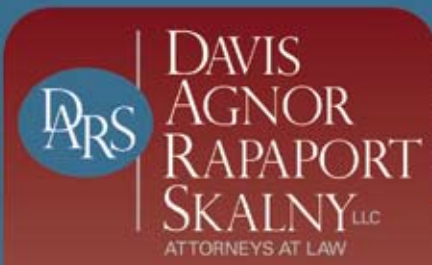


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## What is All the Hype about HIPAA?

If you have visited your physician lately, undoubtedly you have been presented with a form setting forth the physician's privacy practices for your medical information, and have been asked to sign a form acknowledging that you received that notice. You also likely had to sign a consent form that permits your physician to release that information to certain other health care providers. The reason for all of this paperwork? It's the Health Insurance Portability and Accountability Act (HIPAA).

In 1996, under the guise of improving the efficiency and effectiveness of the health care system, HIPAA was born. As part of HIPAA, so-called "administrative simplification" provisions (an oxymoron if ever there was one!) regarding electronic health care transactions were included. The result has been an administrative nightmare for the health care industry.

Recognizing that advances in electronic technology could endanger the privacy of confidential health information, Congress mandated that HIPAA include protections for "protected health information" (PHI).<sup>1</sup> This led, for the first time, to a federal law protecting the privacy of medical information. However, from this relatively simple law has grown over 500 pages of regulations, including criminal and hefty civil penalties for noncompliance, which has caused HIPAA to take on a life of its own.

Many doctors are no longer sending out postcards reminding patient's of appointments, or leaving reminders on answering machines, for fear that this information may be intercepted by someone other than the patient. Some newspapers have had to stop publishing birth announcements because hospitals have stopped providing the names of the parents. The law has even caused some hospitals to limit the exchange of information with other facilities.

Patients in Maryland have been protected by Maryland's Confidentiality of Medical Records Act (MCMRA) since 1991, which has provided comparable, and in some cases more stringent, protection of our medical records. These provisions are unaffected by HIPAA, which will not preempt more stringent state laws. So, HIPAA will not affect the general confidentiality that we have enjoyed for the past twelve years. Like Maryland, HIPAA allows patients access to their own medical records, and both allow disclosures to family unless the patient specifically prohibits it. Neither law restricts the exchange of information between doctors, nurses and other health care providers needed to treat patients. The criminal penalties in HIPAA are virtually identical to those in MCMRA. Perhaps the biggest substantive difference between the two laws is that MCMRA provides for a private cause of action for violations of the law, while under HIPAA aggrieved consumers must file a complaint with the Department of Health and Human Services.

But the cost of implementing HIPAA, even here in Maryland where we have had a law very similar in substance, is staggering. Blue Cross has estimated it will cost approximately \$43 billion dollars over the next five years for computer software and process the paperwork required by HIPAA, like that notice we have all had to sign recently.

It has been said that "the road to hell is paved with good intentions." No one can argue that nationalizing the standards on the privacy of medical records is a good idea. But, the hoops the health care industry has had to jump through lately has it struggling to get out of "HIPAA hell."

<sup>1</sup> Which is defined as "individually identifiable health information" in any form.