

**CALIFORNIA MEDICAL ASSOCIATION**

**MEMORANDUM**

TO: Jack Lewin, MD DATE: May 1, 2003  
FROM: Catherine I. Hanson  
SUBJ: *South Carolina Medical Association et al. v. Thompson*  
- HIPAA is constitutional

On April 25, 2003, the 4<sup>th</sup> Circuit Court of Appeals rejected the challenge to HIPAA's constitutionality mounted by South Carolina Medical Association. In this opinion, the Court rejected all three objections raised.

First, the Court rejected the suggestion that the delegation to the Secretary of HHS to implement the Administrative Simplification provisions of HIPAA, including the adoption of the HIPAA Privacy Rule, was unconstitutional. The Court concluded that the statute provides sufficient "intelligible principles" to guide the Secretary's discretion. HIPAA establishes the general policy—to improve "the Medicare program . . . , the Medicaid program . . . , and the efficiency and effectiveness of the health care system, by encouraging the development of a health information system through the establishment of standards and requirements for the electronic transmission of certain health information", HIPAA §261, 110 Stat. 2021—and further requires that the Privacy Rule "be consistent with the objective of reducing administrative costs of providing and paying for healthcare." HIPAA §262, 110 Stat. 2023. Moreover, in addition to laying out the three subjects the Rule was to address (individual rights, procedures to exercise those rights, and the uses and disclosures of health information that should be authorized or required) the law defines:

What the Privacy Rule was to cover, *see* 42 U.S.C.A. §1320d-1(a); what information was to be covered, *see* §1320d(6) (defining "individually identifiable health information"); what types of transactions were to be covered, *see* §1320-d-2(a)(2); what penalties would accrue for violations of HIPAA, *see* §§1320d-5, 1320d-6; and what timelines and standards would govern compliance with HIPAA, *see* §§1320d-3, 1320d-4.

Slip Opinion at 8.

Second, the Court rejected the suggestion that the Secretary violated the statute by extending protection beyond electronic records to paper records and oral information. The Court concludes that this broad protection was reasonable:

Regulating non-electronic as well as electronic forms of health information effectuates HIPAA's intent to promote the efficient and effective portability of health information and the protection of confidentiality. If coverage were limited to electronic data, there would be perverse incentives for entities covered by the Rule to avoid the computerization and portability of any medical records. Such a development would utterly frustrate the purposes of HIPAA.

Slip Opinion at 12.

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Finally, the Court rejected the suggestion that the HIPAA requirement that "more stringent" state laws continue to apply is "impermissibly vague" such as to violate the Due Process rights of health care providers who will be required to make judgments as to which law is "more stringent." The Court concludes "the regulations are sufficiently definite to give fair warning as to what will be considered a "more stringent" state privacy law:"

These criteria will doubtless call for covered entities to make some common sense evaluations and comparison between state and federal laws, but this does not mean they are either vague or constitutionally infirm.

Slip Opinion at 14.

As this opinion is consistent with a long line of U.S. Supreme Court precedent giving great deference to both Congress and administrative agencies, it is unlikely that the U.S. Supreme Court will overturn it. The remedy for problems with HIPAA generally lies with Congress and the Secretary of DHHS, not the courts.

I will keep you informed on any further developments.

CIH/eht

cc: Hotlist

Enclosure