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Association of Health Information Outsourcing Services Raises Concerns Over Impact of Pending New York Medical Record Acts

Legislation Would Force Hospitals, Patients and Insurers to Cover Cost of Preparing Legal Medical Records; “Exposes Fundamental Misunderstanding of the Process”

New York, N.Y., July 1, 2008 — There are three bills pending in the New York legislature, A. 9501, S. 6626, and S. 1970, that seek to limit the fees that may be charged for the often intricate and time-consuming process of medical record retrieval, review and preparation for the purpose of litigation. If signed into law, these measures would curtail the ability of health care providers and their partners to produce records in a confidential, secure and economically sustainable manner. The Association of Health Information Outsourcing Services (AHIOS), an organization committed to promoting excellence in the handling and dissemination of confidential patient information, believes that these Acts would unfairly shift the financial burden of preparing materials for litigation from the legal parties to the State’s hospitals, and ultimately to patients, and public and private insurers.

“If hospitals are not allowed to seek appropriate compensation for the time and effort it takes to properly prepare confidential health records for release, it is ultimately the patients and taxpayers who suffer,” said Jan McDavid, legislative chair at AHIOS and general counsel and compliance officer at HealthPort Technologies. “When the State sets the rate that hospitals can charge to produce an accurate record in a secure and confidential manner well below what it actually costs to provide that service, it is forcing hospitals to cover costs that should be borne by the requestor. Because hospitals are often not-for-profit and serve communities that include large numbers of under-insured or state-insured patients, those costs ultimately land on the taxpayer’s plate.”

Proposed acts A. 9501 and S.6626 seek to set \$5 as the maximum rate a health care provider may charge for reproducing records electronically, such as on a compact disk. Proposed act S. 1970 seeks to ensure that adverse parties in litigation can access records at the same rates enjoyed by patients seeking their own records.

The major problem AHIOS sees with each of the bills is the lack of understanding or acknowledgement of the effort involved in ensuring patient confidentiality, and the privacy risks faced by the general public if such confidentiality cannot be attained. When a hospital or one of its partners prepares a medical record for litigation purposes, it must complete a meticulous and extensive process involving retrieval of information (sometimes from multiple sites), a detailed review of the record to select just the information associated with specific dates or conditions, careful culling of any sensitive data (e.g., HIV-related data) that legally cannot be released, and duplication of the appropriate materials into the requested format.

“This legislation exposes a fundamental misunderstanding of the process. We are not talking about simply photocopying paper here, nor are we talking about just giving a patient a copy of his or her file – this is a detailed, prescribed set of procedures that is required as part of the legal discovery process,” said Joe Fournier, co-legislative chair at AHIOS and vice president for legal affairs and administration at ChartOne, Inc. “The elements of these Acts pertaining to electronic record formats are particularly telling, because they illustrate the perception that the process is simple; however, the steps involved with moving records to a CD are actually even slightly more burdensome than the steps needed to produce paper records. These bills seem to assume that the fees we have historically charged were just for the copier ink and paper, rather than for the services involved in making sure we have the correct patient information and that we are disclosing only what was authorized.”

Fournier added, “Additionally, the majority of requests we receive are for purposes of personal injury litigation, so this legislation would essentially subsidize personal injury litigation at the potential expense of patient privacy.”

AHIOS will continue to support any legislation that makes it easier for healthcare organizations to produce information efficiently and cost-effectively. It also encourages state legislators who are

considering similar legislation to become fully educated about the process of releasing confidential patient information before passing new laws and offers its support in this endeavor. Interested parties are encouraged to contact Bonnie Coffey at 800-688-9644 or bonnie@cminfospec.com.

About the Association of Health Information Outsourcing Services

Established in 1996, AHIOS promotes, strengthens and enhances the health information management outsourcing industry while ensuring excellence in the handling and dissemination of confidential patient-identifiable information. Its goals are to increase awareness of the value, importance and complexity of the industry's services; establish standards of excellence for the industry of health information management outsourcing; pursue fair and equitable treatment of the industry through legislative, regulatory and legal processes; and create educational and networking opportunities for members.

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