

HIPAA ADMINISTRATIVE SIMPLIFICATION PRIVACY RULE CONTRARY & MORE STRINGENT STATE LAW PROJECT

The Health Law Section's eHealth and Privacy Interest Group is embarking on a new project and is looking for interested volunteers. The Interest Group is looking for volunteers to help compile a nationwide database of state privacy laws. The database will be available to anyone who needs the information to determine whether such laws are contrary to and/or more stringent than HIPAA's final privacy rule.

This project is necessary because under the Administrative Simplification Subtitle of the Health Insurance Portability and Accountability Act of 1996, and more particularly, Section 264(c)(2), stating: (2) PREEMPTION — A [privacy] regulation promulgated under paragraph (1) shall not supersede a contrary provision of State law, if the provision of State law imposes requirements, standards, or implementation specifications that are more stringent than the requirements, standards, or implementation specifications imposed under the regulation....," it will be necessary for "Covered Entities" and "Business Associates" and others to determine whether HIPAA privacy rule standards and requirements are contrary to and/or more stringent than applicable State law.

This need for state law determinations creates an enormous task and will require constant monitoring, analysis, and application of judgment. But perhaps the most difficult part of this task will be determining what the relevant State law (which includes constitutional, statutory and common law) will be for any analysis. It is here that our Project can be helpful. Unfortunately, we understand that the federal government does not have the resources available now to engage in such a project.

So, the Interest Group's approach will be to enlist the aid and support of lawyer-members of the American Bar Association's Health Law Section, as well as members of other Sections (such as the Science and Technology Section and the Business Law Section) interested in HIPAA. At least one volunteer, and more likely many volunteers, will be assigned for every state and in the four additional jurisdictions (the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the U.S. Virgin Islands) for which such determinations must be made, in order to participate in preparing, maintaining and updating a database of relevant constitutional, statutory and common law.

The project intends to make maximum use of existing resources so that such database projects already underway by others for certain States and jurisdictions can be shared and enhanced. A leadership team of several lawyers would be appointed to serve as the liaison between each State and jurisdiction, and the leadership of our Interest Group project. The Interest Group intends to complete the project not later than the end of this year.

If you are looking for a way to make a professional contribution to how health care privacy will be maintained and enhanced by HIPAA and otherwise as part of your public service commitment as a member of the bar, this project is worthy of your consideration. There is a paucity of resources otherwise available for the information that the project will produce and maintain, and therefore this surely is an area in which the American Bar Association can assist our government, over two hundred eighty million patients, and those involved in the health care delivery system, in furtherance of the public interest.

For more information or to volunteer to be a part the project, contact Section Director Jill Peña at 312/988-5548 or e-mail her at jillpena@staff.abanet.org.