

Health Care Industry Beware: Congress is Taking Aim to Further Protect Patient Information

Ronald A. Christaldi and Amy Rani Nath

The recent enactment of the Genetic Information Nondiscrimination Act of 2008, or GINA, indicates a move at the federal level to further protect patient information and increase regulation of the health care industry. GINA prohibits discrimination by employers and health insurers on the basis of genetic information, and its enactment has been years in the making. The bill passed by a unanimous 95-0 vote in the United States Senate on April 24th, and subsequently passed by a nearly-unanimous 414-1 vote in the United States House of Representatives on May 1st. President Bush officially signed the bill into law on May 21st.

GINA's purpose is to establish a national and uniform basic standard to protect the public from genetic discrimination, thereby encouraging individuals to take advantage of genetic testing, technologies, research, and new therapies. It is divided into three parts: Genetic Nondiscrimination in Health Insurance, Prohibiting Employment Discrimination on the Basis of Genetic Information, and Miscellaneous Provisions. The health insurance measures will go into effect in May, 2009, and the employment measures will be effective in November, 2009.

The first part covers amendments to ERISA, the Public Health Service Act, the Internal Revenue Code, and the Social Security Act. It also adds to the Social Security Act a section which applies HIPAA regulations to genetic information in that it requires genetic information be treated as health information under the HIPAA privacy regulation. Thus, group health plans, insurers, and issuers of medicare supplemental policies must treat genetic information as an individual's protected health information.

Ultimately, GINA may aid in medical treatment as healthy individuals may be more likely to get tested for their genetic predisposition to certain diseases and disorders without the fear of employment discrimination or increased insurance premiums. Additionally, increased genetic testing may promote medical advances, as researchers may be more likely to develop treatments for diseases with hereditary links.

However, healthcare providers should take note that GINA's enactment signals a move toward greater protection of patient information. This move is made more evident by the most recent congressional action with respect to the Wired for Health Care Quality Act. The Wired

Act is a Senate bill which would enhance the adoption of a nationwide interoperable health information technology system. That bill has been stalled in the Senate, however, and a substitute bill containing provisions for even greater patient privacy is expected to be offered. Those provisions, authored by Senator Leahy, would:

- Eliminate loopholes under the HIPAA Privacy Rule that currently allow certain healthcare providers to use or disclose patient health records for marketing purposes.
- Strengthen congressional oversight over privacy compliance and enforcement of the HIPAA Privacy Rule.
- Direct the Secretary of Health and Human Services to ensure more public transparency and stronger privacy obligations on health care providers who contract and outsource patient health records to third-party providers.

In light of these recent developments, the health care industry should remain alert to this seemingly ever-changing area of the law.