

**Congress of the United States**  
**House of Representatives**  
108th Congress  
**Committee on Small Business**  
2361 Rayburn House Office Building  
Washington, DC 20515-6315

April 11, 2003

Honorable Tommy G. Thompson  
Secretary  
Department of Health and Human Services  
Hubert H. Humphrey Building  
200 Independence Ave, S.W.  
Washington, D.C. 20201

**RE: Concerns Regarding Small Employer HIPAA Compliance**

Dear Secretary Thompson

As the compliance date for the federal privacy regulations for the Health Insurance Portability and Accountability Act of 1996 (HIPAA) approaches, we have been told that many dentists, physicians and other covered healthcare providers continue to find the regulation confusing, which makes compliance more difficult. As such, these small employers are at risk of substantial penalties for noncompliance despite their best intentions.

Small employers do not have the resources to hire an individual to be a full-time compliance expert. Thus, the practitioners or others on their staffs must devote time to understanding these complex and ambiguous rules. Many health care associations have gone to great lengths to educate their members by conducting HIPAA privacy seminars and providing privacy kits, complete with HIPAA policies, procedures, forms and checklists. However, the dialogue at these seminars, whether conducted by an association or others, often raises as many questions as it answers.

We are concerned that too many fundamental questions remain unanswered, despite the best efforts of the Office of Civil Rights to respond to all inquiries. For example, identifying who are business associates and when authorizations are required will vary depending on the way care is delivered, so clarification may be required for different disciplines. Without this basic, specific information small employers are especially vulnerable because of their lack of resources.

Equally alarming is the reality that there are some entities that are making this issue more confusing through their marketing practices. On April 8, 2003, the HHS Office of Inspector General issued an alert regarding the U.S. Seminar Corporation's fraudulent mailing practices regarding their privacy seminars. This corporation sent out hundreds of thousands of mailings to health care providers telling them, among other things, that the providers were mandated to attend their privacy seminars and implied that they were official government representatives. Clearly, these tactics only serve to confuse compliance further.

Given the state of confusion and concern about the regulations, the changes it will entail in delivery of services by small healthcare providers, and the potential liability, it is evident that the Department's certification of no significant impact on small entities was incorrect. We strongly believe that the privacy rules will have a significant economic impact on a substantial number of small healthcare providers. Therefore, the Department must consider supplementing its existing guidance with a plain-English compliance guide as set forth in the Small Business Regulatory Enforcement Fairness Act.

However, we believe the Department needs to more than produce an adequate compliance guide. We are requesting at least a one-year delay (from April 14, 2003) in the implementation of the enforcement provisions for small employers (25 full-time equivalent employees or fewer). This would enable the Department to produce the plain-English compliance guide and give small employers sufficient time to adjust their service delivery without subjecting them to potential liability. Should the Department not accede to our request, then, at a minimum, the Department should give these small employers a low enforcement priority.

Sincerely,



DONALD A. MANZULLO  
Chairman



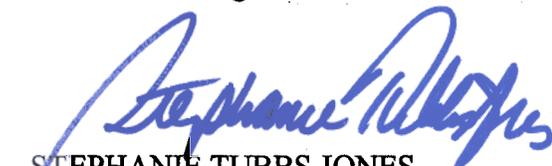
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Ranking Democratic Member



JUANITA MILLENDER-MCDONALD  
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Member of Congress



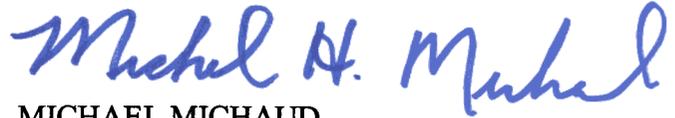
FRANK BALLANCE  
Member of Congress



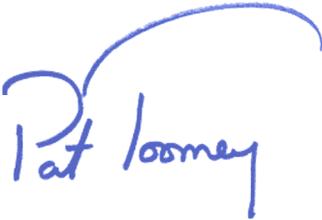
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