



Lisa A. Rickard  
President

January 30, 2009

The Honorable Harry Reid  
Majority Leader  
United States Senate  
Washington, DC 20510

The Honorable Mitch McConnell  
Republican Leader  
United States Senate  
Washington, DC 20510

Dear Majority Leader Reid and Republican Leader McConnell:

The U.S. Chamber Institute for Legal Reform (ILR) has serious concerns with section § 4410(e) of H.R. 1, the “American Recovery and Reinvestment Act of 2009.” This provision grants to State Attorneys General (“AGs”) broad authority to enforce federal privacy provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). ILR believes that this provision would lead to costly and unnecessary litigation at a time when American business is struggling to survive in this difficult economic environment.

The federal government is currently vested with primary enforcement authority under HIPAA, and through the Department of Health and Human Services (“HHS”), has developed substantial expertise regarding the administration and implementation of this federal law. Businesses have worked closely with HHS to implement compliance plans on how to meet the requirements of this law. The states also share a complementary role in enforcing certain policies through separate enforcement tools provided under state privacy and consumer protection laws. But, granting the AGs this expanded authority would create a patchwork of potentially conflicting authorities and interpretations, creating confusion among companies, and encouraging a multitude of civil actions. Instead of directing resources towards complying with HIPAA and shielding patient health information, businesses would be forced to expend time, energy, and resources attempting to satisfy the potentially differing interpretations of more than 50 regulators, who may or may not have the requisite expertise to effectively interpret and enforce the statute.

To make matters worse, many AGs have begun to “farm out” some of their litigation efforts to private plaintiffs’ law firms, which have been hired by AGs on a contingency fee basis. These firms are usually driven by profit motives and do not necessarily share the broader public policy goals that motivate the AGs. As such, allowing private law firms to litigate HIPAA enforcement is a recipe for vastly higher costs and increased regulatory complexity.

ILR urges you to oppose § 4410(e) of H.R. 1, including any companion versions contained in the Senate bill, and retain the current enforcement structure that establishes HHS as the agency with sole enforcement responsibility for HIPAA.

Sincerely,

A handwritten signature in cursive script that reads "Lisa A. Rickard".

Lisa A. Rickard

Cc: The Members of the United States Senate