

July 22, 2013

Office of the Insurance Commissioner
Meg L. Jones
P.O. Box 40258
Olympia WA 98504

Dear Ms. Jones:

I am writing on behalf of International Community Health Services, a safety net provider and federally qualified health center providing health care services for over 40 years. We are responding to the Preproposal Letter of Inquiry regarding Insurance Commissioner Matter No. R 2013-11, which concerns an insured person's health information being made available to other household members without their consent.

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We are very concerned about the inadvertent breach of the privacies afforded by HIPAA when *Explanations of Benefits* paperwork is issued or electronically recorded and the recipient of healthcare services is not the policy holder. This is an issue that gravely impacts both adult and adolescent patients' safety and ability to access care. We appreciate that you are addressing it with this process.

We strongly believe that patients need clear assurance that utilizing insurance reimbursement does not preclude their ability to receive confidential services. In our work we come into contact with multiple patient groups for whom this is a serious concern:

- Adult spouses of any age whose partner holds the insurance policy, particularly troubling when domestic violence is an issue in the relationship
- Minors who have the legal right to access confidential healthcare services, but are insured through a parent/caregiver, creating a deterrent to seeking care for sensitive services
- Young adults (age 18-26) who remain on their parent's health insurance up to age 26

Currently, state law only requires confidentiality in billing for services when a written request is submitted (WA Administrative Code, 284-04-510). This process is unwieldy and unworkable as each insurer has a unique set of procedures for implementing a confidentiality request around billing. This information is not routinely shared with the insured population. Therefore, it is rarely if ever evoked in practice, and so affords little confidentiality protection. This creates several critical issues, including:

- Difficulty accessing mental health care in a situation of domestic violence where the abuser's knowledge of this fact may provoke dangerous or lethal consequences.
- Limited ability of providers to bill in school based health centers and in other locations when a minor is unaccompanied and can legally self-consent for services. This ultimately impacts ability to collect revenue for services provided to insured populations and impacts long term sustainability.

- Reluctance of minors, who have the legal right to independently consent for a variety of services (including sexually transmitted infections (STI) testing and treatment, contraception, and behavioral health services) and also young adults 18 – 26 years old (who may consent for any service) to access care knowing parents may be informed – completely disrupting the intention of current confidentiality protections.
- Issues of safety for a victim of sexual abuse who is seeking mental health services/ STI treatment, or abortion services due to abuse by a family member who is the policy holder.

Staff at our clinics have shared that they sometimes take calls from parents who have received EOBs and they question whether or not the patient/child was seen at the clinic and if so, for what services. According to HIPAA, we can neither confirm nor deny the information on the EOB and can certainly not disclose services provided that were confidential in nature. It places our staff and our patients in very challenging situations.

We encourage you to work on producing new regulations for insurance carriers that will better guide them to safeguard their insured persons' right to confidentiality. We would request that these regulations will mandate the kind of policies and procedures that are easily understood by patients and able to be implemented in a simple way by providers at the point of care. Although our focus is on EOBs, other forms of insurance-related communication should also be considered whenever the disclosure of information violates confidentiality (e.g., web access to historical patient billing records).

Our specific suggestions are that these new regulations include:

- a common method to request the suppression of the issuance of an EOB and other forms of insurance-related communication that will be used by all insurers in Washington;
- a mandate that carriers convey billing suppression information clearly and consistently to providers and covered parties;
- a reduction in the amount of information needed for the suppression request;
- a requirement that insurers confirm in writing having received the request;
- an ability for care providers to forward the signed request on the patients behalf ;
- mechanisms for enforcement, including penalties for noncompliance permitted under Title 48;
- automatic suppression of detailed EOBs or other billing paperwork for all services where:
 - Section 2713 of the Affordable Care Act requires no patient financial liability
 - the service has existing confidentiality protection (e.g., mental health, STI care) in Washington State by law.

We need practical solutions that will ensure legally defined confidentiality protections are actually upheld in real world situations and that patients' access to care is safeguarded.

Sincerely,



Teresita Batayola, CEO
International Community Health Services