People want Health IT - but also have significant privacy concerns

- Survey data shows the public wants electronic access to their personal health information.

- But a majority - 67% - also have significant concerns about the privacy of their medical records (California Healthcare Foundation 2005).
EMRs

- Covered by the HIPAA Privacy and Security Rules
- HIPAA protections enhanced by provisions in ARRA/HITECH
What about PHRs?

- Covered by HIPAA if offered by a covered entity or business associate.
- Not covered by HIPAA if offered by an independent vendor.
- In some cases, independent vendors may be business associates of covered entities.
  - Provision in ARRA yet to be interpreted.
- Right to electronic copy – can direct to PHR.
If not covered by HIPAA, then what?

- **FTC Act**
  - Must abide by privacy policies
  - Must adopt reasonable security protections

- **Breach notification provisions in ARRA**

- **Other federal laws that apply to Internet-based companies, electronic storage media**
  - None provide comprehensive privacy and security framework

- **State laws**
ARRA requires HHS (working with FTC) to report to Congress on privacy & security recommendations for PHR vendors not covered by HIPAA

Due February 18, 2010

Study must include recommendation for which agency should regulate vendors
Should HIPAA apply?

- HIPAA permits broad information sharing for treatment, payment & health care operations (as well as disclosures for public health and some research purposes without patient consent).

- Right approach for health system entities – wrong approach for a tool intended to be used by the consumer.
  - Rules for marketing uses also too permissive

- Other parts of HIPAA may be applicable
What protections should be in place?

- Markle Common Framework for Networked Personal Health Information sets forth consensus policies for PHRs
  - [www.connectingforhealth.org/phti](http://www.connectingforhealth.org/phti)
- Endorsed by wide array of stakeholders, including major PHR vendors & consumer groups, AHIP
Elements of Framework

- Policies & technical security requirements

- Based on fair information practices tailored to PHRs

- Examples:
  - Consumer consent and control over access to information in the PHR
  - Mechanisms for resolving disputes (such as errors & data quality)
  - Access to information
  - Audit trails
“Next Generation” of Health Privacy

- Build on HIPAA for traditional health care entities – address “who is covered” and “what protections are in place”

- Establish new protections to address concerns raised by access to information outside of the health care system

- Ensure patients trust infrastructure so that information sharing for treatment purposes can occur
Difficult Issues

- Making sure individuals are protected regardless of where data sits or flows
- Separate rules for EMRs & PHRs – sustainable over the long term?
- Evolving area of consumer health applications
For privacy to enable health IT, we need to “enable” privacy

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