July 15, 2008

Honorable John Dingell
Chairman
Honorable Joe Barton
Ranking Member
House Committee on Energy and Commerce
2125 Rayburn Building
Washington, DC 20515

Dear Chairman Dingell and Ranking Member Barton:

The American Medical Informatics Association (AMIA) and the American Health
Information Management Association (AHIMA) are writing to express our concerns with
HR 6357, the "Protecting Records, Optimizing Treatment, and Easing Communication
through Healthcare Technology Act of 2008" as it passed the Health Subcommittee of
the House Energy and Commerce Committee.

Although AHIMA and AMIA are pleased with many provisions of the legislation, we
must withhold our support at this time. As we reviewed the bill that was considered and
passed by the Health Subcommittee, three major concerns became apparent:

1. Sec. 312 (d) Application of Consent Requirements for Certain Uses and
   Disclosures by Health Care Providers with Electronic Medical Records is onerous
   and would prohibit the completion of vital functions in the wide-range of
   healthcare enterprises in United States.

2. HR 6357 fails to adequately address the workforce issue. AMIA and AHIMA
   believe that it is essential to address the dire situation where the need for a health
   information specialist workforce is growing while the number of trained
   professionals is not keeping pace.

3. The legislation lacks any provisions that recognize the plethora of standards work
   that is and has been underway by a range of other groups as the National
   Committee on Vital and Health Statistics, the Health Information Technology
   Standards Panel and the Certification Commission for Health Information
   Technology.

Consent

The consent requirement in section 312 (d) in the subcommittee passed legislation presents a three-fold problem:

- First, the language is applicable only to "protected health information of an individual that is used or maintained by such entity in an electronic medical record…" This focus creates multiple consent rules that would be determined by a facilities type of record system—paper, electronic, or hybrid. Not only will this act as a deterrent for physicians or facilities to purchase electronic health record systems, the language adds another level of complexity to determining what laws, regulations and rules to follow as the health information systems of our nation go through transformation;
- Second, the consent language would prohibit compliance with and the completion of vital functions such as quality reporting; patient safety; accreditation; training and medical education; fraud and abuse auditing; de-identifying data for research; and more; and
- Third, the consent language would add major costs and time to the general administration of healthcare services without adding any real value to the healthcare encounter. For example, the consent requirement could add potentially 10-minutes to the registration interview process when trying to explain this specific consent to an individual with no knowledge of healthcare administration. In addition, the financial impact on physicians would also be felt as they attempt to comply with the physician quality reporting initiative (PQRI).

For AMIA and AHIMA to support this legislation, section 312 (d) would need to be deleted from HR 6357.

Workforce

As the transition to an electronic health record continues to gain momentum, healthcare delivery will need to dramatically reinvent the way it collects, processes, and uses health information. For a successful transition to health information technology and electronic exchange of data, healthcare will need a workforce capable of innovating, implementing and using health communications and information technology.

HR 6357 fails to adequately address the workforce issue. The "National Science Foundation Health Information Technology Capacity Building Grant Programs Amendment", drafted by Rep. David Wu (D-OR), will improve the quality, safety, efficiency, effectiveness, timeliness, and coordination of healthcare in the United States. AMIA and AHIMA believe that it is essential to address a situation where the need for a health information management workforce is growing while the number of trained professionals is not keeping pace. The Wu amendment addresses this issue through the establishment of a variety of grants that focus on research, education and training of

future health information specialists. Without a workforce capable of innovating, implementing, and using technology, as well as protecting health information, many HIT system implementations will fail or could even cause harm. Further, without a plan to train clinicians and existing health information specialists at all levels of healthcare delivery, the goal of an improved, interconnected healthcare system may never be met, and the industry may lose much ground as it moves toward health information technology. The healthcare industry is already behind on meeting the education needs necessary to have a trained workforce. Your support of this amendment will significantly help us to close the gap in our need for educated and trained professionals and the goals set for the effective use of health information technology.

Recognition and Harmonization

As noted in our initial comments supplied to committee staff on June 3, 2008, the description of the HIT Policy Committee fails to recognize another congressionally mandated group established to address health information and policy, the National Committee of Vital and Health Statistics (NCVHS). This committee has existed for almost 60 years and in the last ten years has also been given the oversight of the "Health Insurance Portability and Accountability Act of 1996" (HIPAA) requirements for administrative simplification as well as initiating the national health information infrastructure concept and addressing a number of issues related to HIT standards and quality. The role of this committee will overlay that of the HIT Policy Committee and perhaps this group's roles need to be considered since they will be addressing the same data use and some of the same standards.

In reviewing the bill, we discovered that there is no formal recognition of the standards work that is already underway and making significant progress in the last few years. First, we believe it is important to therefore recognize the standards development organizations (SDOs) and their work.

Second, we suggest that the role of the existing Health Information Technology Standard Panel (HITSP) be recognized and identified. HITSP's role is to harmonize standards, a process that normally would occur after the standards had been finalized by the SDOs and tested according to other parts of this section. Without such harmonization there can be tested but competing standards. While the sustainability of HITSP, to date, has been in question, this vital role, usually supported by the government in other nations, has proven very positive to ensure standard interoperability and improve acceptance of standards by the healthcare industry. HITSP is also representative of all sectors of the healthcare industry and as such can provide good industry oversight to the testing and other activities prescribed to the National Institute of Standards and Technology (NIST).

Third, we suggest, as noted above, that the role of the Certification Commission for Health Information Technology (CCHIT) also be recognized. Once standards are tested and recommended, and harmonization has occurred, the products that should carry the standard to make functionality available to the user need to be certified. This successful process is helping to promote the adoption and implementation of standards therefore

leading to interoperability and the capability of health information exchange. Work of HITSP and CCHIT have provided significant progress, for them to be ignored by a new federal process will set our adoption of HIT back several years.

In addition to recognizing these groups, some formal or ad hoc relationship should occur between the Standards Committee and these groups.

Besides the groups just mentioned, there are a number of other functions that need to be recognized by both the Policy and Standards committees. First, AHIMA and AMIA have addressed in our paper "Healthcare Terminologies and Classifications: An Action Agenda for the United States", the need for a public/private body to coordinate the terminologies and classifications that are carried in the various clinical standards being considered. Most industrial countries have such a body and HR 2406 has recommended funding to determine just how such a group should function in the US. Currently, it is the federal government that has the oversight for the ICD classifications and some work in the area of integrating terminologies, but none of this is centralized or coordinated to the level needed to achieve the goals we all seek for HIT. We recommend that this bill carry this same provision and perhaps establish a place holder for such a group.

A second function under discussion by the federal government and the healthcare industry is data stewardship - the coordination and facilitation of data sets used for quality reporting, patient safety, research and other uses beyond that of clinical care. The Agency for Healthcare Research and Quality (AHRQ) sought input for such a function and AHIMA has submitted a paper on this subject, but AHRQ has yet to make a recommendation.

Chairman Dingell and Ranking Member Barton, AMIA and AHIMA strongly urge you to address these important concerns. The members of our two associations are truly on the front lines of implementing electronic health records and health information technology. We will be impacted directly by most of the provisions contained within HR 6357.

Notification in the Case of Breach

Having noted our concerns regarding the newly added consent for healthcare operations requirement, the bill's inattention to development and training of a health information workforce, and the lack of recognition of existing efforts to develop HIT standards, we want to thank you for revisions made (at Sec. 302) to the breach notification requirements imposed on covered entities. Permitting such notifications to be made electronically as well as by first-class mail, extending the notification period, and providing a clear 'safe harbor' for encrypted health data are all helpful changes. However, AHIMA and AMIA continue to believe that breach reporting requirements stipulated in Federal legislation must preempt the myriad State laws that have been enacted in this area. Unlike the use of the broad concepts of the HIPAA Security and Privacy Rules as a 'floor' for protecting the security and confidentiality of health information, the efficacy of breach reporting requirements turns on specifics, such as timelines for reporting, (whether 10 or 15 or 30 days, for example). In an era when the delivery of health care is rarely limited by

geographic area, the breach reporting requirements outlined in your bill will become one of (potentially) 51 sets of requirements that will, at best, impose costs on CEs, BAs and PHR vendors while, in general, providing uncertain value to individuals.

Thank you again for providing us the opportunity to work with you on this much needed legislation.   If we can provide any additional information regarding our concerns, please do not hesitate to contact AMIA Legislative Representative Doug Peddicord at doug.peddicord@whaonline.org or 202-543-7460, or AHIMA's Director of Government Relations Don Asmonga at don.asmonga@ahima.org or 202-659-9440.

Sincerely,

Don E. Detmer, MD, MA, FACMI   Linda L. Kloss, RHIA, CAE, FHIMA
President and CEO   Chief Executive Officer
AMIA   AHIMA

AHIMA is the premier association of over 53,000 health information management (HIM) professionals whose members are dedicated to the effective management of the personal health information needed to deliver quality healthcare to the public. Founded 80 years ago to improve the quality of medical records, AHIMA is committed to advancing the health information management profession in an increasingly electronic and global environment through leadership in advocacy, education, certification, and lifelong learning. For additional information, you can visit www.ahima.org.

With over 4,000 physicians, nurses and other informaticians, AMIA is the premier organization in the United States dedicated to the development and application of medical informatics in the support of patient care, teaching, research and healthcare administration. AMIA links developers and users of health information technology, creating an environment that fosters advances that revolutionize healthcare. To learn more, you can visit www.amia.org.