

Updated – February 10, 2009
AHP’s Position on H.R. 1 SEC. 4405(d) and 4406(b)
Conditions on Certain Contacts as Part of Health Care Operations

It is the position of the Association for Healthcare Philanthropy (AHP), whose more than 4,900 members manage foundations and development departments of nonprofit health care providers throughout the United States, that fundraising **remains a part of health care operations** as provided under the current Health Insurance Portability and Accountability Act (HIPAA). The final privacy regulations include fundraising “for the benefit of the covered entity” as a “health care operation” in section 45 CFR § 164.501.(6) and it should **not** be changed as proposed in H.R. 1 SEC 4405(d) and SEC 4406(b).

Section 4406(b) would effectively deny the development offices of not-for-profit hospitals and health care providers access to names and addresses of patients in their own institutions, information that is protected and used for the sole purpose of philanthropic outreach. Unlike the development and implementation of these regulations, there is neither a record nor basis to justify this change. Therefore, it is the position of AHP that the conferees should recede to the Senate bill and delete Section 4406(b) from the final legislation.

Further, Section 4405(d), Review of Healthcare Operations, would require the promulgation of regulations regarding the definition of health care operations. It is the position of AHP that the language adopted in section 13405(d) of the Senate bill, which requires a review and evaluation of the definition of health care operations, is a more balanced and reasonable approach and should be adopted by the conferees in the final legislation.

In drafting HIPAA, the Department of Health and Human Services (HHS) recognized that fundraising activities of nonprofit health care institutions are essential to our health care system and kept fundraising in the definition of health care operations. It is worth noting, that six years after HIPAA patient privacy rules went into effect there are virtually no examples of violations in the context of fundraising efforts, according to the Office for Civil Rights of the Department of Health and Human Services in a April 11, 2008 letter signed by HHS Deputy Director for Health Information Privacy Susan McAndrew, J.D.

For philanthropy to continue to fulfill its role in the American health care system, this is not the time to drastically change standards for fundraising. Americans’ generosity in support of nonprofit hospitals and health care systems is substantial, totaling \$8.35 billion last year according to AHP’s *Report on Giving 2007*. This report reveals an important insight concerning the importance of public backing for the nonprofit health care community: Almost 83 percent of all donors last year were *individuals –including grateful patients*. Individuals provided 61 percent of all donations.

Unfortunately, the growth rate of giving to the health care sector is slowing down and the number of donors is flat. According to a 2007 *Chronicle of Philanthropy* story, “Contributions to health-care institutions rose last year by 8.3 percent, adjusted for inflation, compared with a 12.9-percent rise from 2004 to 2005.” The same conclusion was drawn from an AHP-sponsored study

released in September 2008, *Economic Cycles and Charitable Giving*, by John Volpe, Ph.D., collegiate professor at the University of Maryland University College. Volpe concludes that a slowing of the growth in Gross Domestic Product (GDP) and disposable personal income, as well as uncertainty over the economy are likely to contribute to weakness in charitable giving through 2009.

Yet such charitable giving is and will remain vital to the hospitals and systems to which it flows. According to the American Hospital Association (AHA) November 2008 *Report on the Economic Crisis*, the capital crunch is making it difficult and expensive for hospitals to finance facility and technology needs. The *AHP Report on Giving* indicates that more 45 percent of charitable giving was put to use to upgrade infrastructure, including often long-overdue construction and renovation projects and equipment purchases. An additional 25 percent supported important functions such as community benefit programs, charitable care, research and teaching, and hospice, long-term and nursing care. About 14 percent went to general operations.

These accomplishments were achieved through fundraising and its outreach efforts to grateful patients. While the Nation's health care needs are increasing, we must avoid creating obstacles that will diminish and discourage philanthropy.

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AHP's position is fully supported by the American Hospital Association, the Healthcare Financial Management Association and the Catholic Health Association.