



February 9, 2009

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Henry Waxman
Chairman
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Joe Barton
Ranking Member
Committee on Energy and Commerce
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Charles Rangel
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

The Honorable Dave Camp
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington, D.C. 20515

Dear Speaker Pelosi, Ranking Member Boehner, Chairmen Waxman and Rangel, and Ranking Members Barton and Camp:

As Chairman and CEO of Molina Healthcare, Inc., I write to express my support for the advancement of health information technology as part of the American Recovery and Reinvestment Act. Molina Healthcare, Inc. is among the most experienced managed healthcare companies serving patients who have traditionally faced barriers to quality healthcare, including individuals covered under Medicaid, the State Children's Health Insurance Program (SCHIP) and other government-sponsored health insurance programs. Molina has health plans in California, Michigan, New Mexico, Ohio, Texas, Utah, Washington, Missouri and Nevada, as well as 19 primary care clinics located in Northern and Southern California.

Molina Healthcare, Inc. is committed to advancing an interoperable system in which health information can be shared electronically in a secure and efficient manner. We are committed to satisfying every state and federal law protecting the privacy of the personal and health information of our members and patients. Therefore, we support federal efforts to protect the privacy and security of protected health information (PHI).

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However, we believe that several of the privacy provisions contained in the House economic stimulus bill may have the unintended consequences of slowing the adoption of Electronic Health Records (EHRs), adversely affecting quality of care and increasing costs for providers and patients. We ask that you work to make changes to these important provisions during conference committee consideration with the Senate.

We strongly support the provisions in the House stimulus bill that promote the adoption of health information technology; however, we are concerned that the House bill provision requiring PHI disclosures from EHRs for treatment, payment, and health care operations functions must be tracked for PHI disclosure accounting purposes. We believe this provision provides little in the way of privacy protections for patients but will be excessively burdensome, costly, and administratively difficult to implement. Such a provision will serve as a powerful disincentive to implementing EHRs, rather than encouraging their use. Furthermore, since we began complying with the HIPAA Privacy Rule, very few individuals have requested accountings of disclosures from Molina Healthcare. Requiring the tracking of such a high volume of disclosures will reduce the cost savings to the health care system that can be realized through the wide-spread adoption of EHRs.

We are also concerned about the bill's proposed provisions which would restrict providers' and plans' uses or disclosures of PHI to a "limited data set" or minimum necessary PHI as determined by the Secretary through guidance to be issued by the Secretary in the future. We believe the determinations of minimum necessary are highly contextual and best determined by health care professionals familiar with the specifics of a particular situation. Furthermore, we believe that the proposed changes to the definition of "health care operations" are unnecessary and will adversely affect the quality of care that patients receive and the efficiency of provider and plan operations. We believe that providers and plans are in the best position to determine whether it is feasible to use de-identified health information to perform a function.

In addition, the bill contains broadly worded requirements for notifying individuals and the Department of Health and Human Services about privacy and security breaches. Although we support a federal breach notification provision, we believe the proposed provision has several problems which can be best addressed through a separate legislative effort. We do not believe that the breach notification provision is essential to the stimulus bill and urge Congress to remove this provision from the bill. We believe the breach notification provision should preempt state law breach notification requirements for PHI so that providers and plans are not faced with a patchwork quilt of notification requirements.


We also support the inclusion of a harm threshold, which would require individual notification only in the event the breach were likely to result in harm to the persons affected by the breach. Without a harm threshold, such breach notifications may cause unnecessary alarm to the patients and increased costs and administrative burden on providers and plans, including government health programs, such as Medicare and Medicaid. In addition, we believe the breach notification provisions should be harmonized with the current privacy requirements by including an exclusion for breach notifications for incidental disclosures as defined in the HIPAA Privacy Rule.

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Finally, although we support more robust enforcement of the HIPAA privacy and security requirements, we are concerned with provisions in the bill that would authorize state Attorneys General to enforce federal privacy and security standards. Such a structure would lead to a patchwork approach as each Attorney General may interpret the law differently. As Molina operates in ten different states, we may be faced with ten different fees and regulations, leading to increased costs and administrative burden.

Thank you for your consideration of these important issues. I hope you will consider our concerns and suggestions as you work to resolve the differences between the House and Senate economic stimulus packages. I commend you on your continued leadership on advancing health information technology and your commitment to passing an economic recovery package.

Sincerely,



Joseph M. Molina, MD
CEO and Chairman
Molina Healthcare, Inc.