

March 15, 2001

The Medical Privacy Protection Resolution

HON. RON PAUL OF TEXAS IN THE HOUSE OF REPRESENTATIVES Thursday, March 15, 2001

- Mr. PAUL. Mr. Speaker, I rise to introduce the Medical Privacy Protection Resolution, which uses the Congressional Review Act to repeal the so-called Medical Privacy regulation. Many things in Washington are misnamed, however, this regulation may be the most blatant case of false advertising I have come across in all my years in Congress. Rather than protect an individual right to medical privacy, these regulations empower government officials to determine how much medical privacy an individual "needs." This ``one-size-fits-all" approach ignores the fact that different people may prefer different levels of privacy. Certain individuals may be willing to exchange a great deal of their personal medical information in order to obtain certain benefits, such as lower-priced care or having information targeted to their medical needs sent to them in a timely manner. Others may forgo those benefits in order to limit the number of people who have access to their medical history. Federal bureaucrats cannot possibly know, much less meet, the optimal level of privacy for each individual. In contrast, the free market allows

individuals to obtain the level of privacy protection they desire.

- The so-called "medical privacy" regulations not only reduce an individual's ability to determine who has access to their personal medical information, they actually threaten medical privacy and constitutionally-protected liberties. For example, these regulations allow law enforcement and other government officials access to a citizen's private medical record without having to obtain a search warrant.

- Allowing government officials to access a private person's medical records without a warrant is a violation of the Fourth amendment to the United States Constitution, which protects American citizens from warrantless searches by government officials. The requirement that law enforcement officials obtain a warrant from a judge before searching private documents is one of the fundamental protections against abuse of the government's power to seize an individual's private documents. While the Fourth amendment has been interpreted to allow warrantless searches in emergency situations, it is hard to conceive of a situation where law enforcement officials would be unable to obtain a warrant before electronic medical records would be destroyed.

- Mr. Speaker, these regulations also require health care providers to give medical records to the federal government for inclusion in a federal health care data system. Such a system would contain all citizens' personal health care information. History shows that when the government collects this type of personal information, the inevitable result is the abuse of citizens' privacy and liberty by unscrupulous government officials. The only fail-safe privacy protection is for the government not to collect and store this type of personal information.

- In addition to law enforcement, these so-called "privacy protection" regulations create a

privileged class of people with a federally-guaranteed right to see an individual's medical [Page: E372] [GPO's PDF](#) records without the individual's consent. For example, medical researchers may access a person's private

- Forcing individuals to divulge medical information without their consent also runs afoul of the fifth amendment's prohibition on taking private property for public use without just compensation. After all, people do have a legitimate property interest in their private information. Therefore, restrictions on an individual's ability to control the dissemination of their private information represents a massive regulatory taking. The takings clause is designed to prevent this type of sacrifice of individual property rights for the "greater good."

- In a free society such as the one envisioned by those who drafted the Constitution, the federal government should never force a citizen to divulge personal information to advance "important social goals." Rather, it should be up to the individuals, not the government, to determine what social goals are important enough to warrant allowing others access to their personal property, including their personal information. To the extent these regulations sacrifice individual rights in the name of a bureaucratically-determined "common good," they are incompatible with a free society and a constitutional government.

- The collection and storage of personal medical information "authorized" by these regulations may also revive an effort to establish a "unique health identifier" for all Americans. The same legislation which authorized these privacy rules also authorized the creation of a "unique health care identifier" for every American. However, Congress, in response to a massive public outcry, has included a moratorium on funds for developing such an identifier in HHS budgets for the last three fiscal years.

- By now it should be clear to every member of Congress that the American people do not want their health information recorded on a database, and they do not wish to be assigned a unique health identifier. According to a survey by the respected Gallup Company, 91 percent of Americans oppose assigning Americans a "unique health care identifier" while 92 percent of the people oppose allowing government agencies the unrestrained power to view private medical records and 88 percent of Americans oppose placing private health care information in a national database. Mr. Speaker, Congress must heed the wishes of the American people and repeal these HHS regulations before they go into effect and become a backdoor means of numbering each American and recording their information in a massive health care database.

- The American public is right to oppose these regulations, for they not only endanger privacy but could even endanger health! As an OB-GYN with more than 30 years experience in private practice, I am very concerned by the threat to medical practice posed by these regulations. The confidential physician-patient relationship is the basis of good health care. Oftentimes, effective treatment depends on the patient's ability to place absolute trust in his or her doctor. The legal system has acknowledged the importance of maintaining physician-patient confidentiality by granting physicians a privilege not to divulge confidential patient information.

- I ask my colleagues to consider what will happen to that trust between patients and physicians when patients know that any and all information given their doctor may be placed in a government database or seen by medical researchers or handed over to government agents without so much as a simple warrant?

- Mr. Speaker, I am sure my colleagues agree that questions regarding who should or should not have access to one's medical privacy are best settled by way of contract between a patient and a provider. However, the government-insurance company complex that governs today's health care industry has deprived individual patients of control over their health care records, as well as over numerous other aspects of their health care. Rather than put the individual back in charge of his or her medical records, the Department of Health and Human Services' privacy regulations give the federal government the authority to decide who will have access to individual medical records. These regulations thus reduce individuals' ability to protect

their own medical privacy.

- These regulations violate the fundamental principles of a free society by placing the perceived ``societal" need to advance medical research over the individual's right to privacy. They also violate the fourth and fifth amendments by allowing law enforcement officials and government favored special interests to seize medical records without an individual's consent or a warrant and could facilitate the creation of a federal database containing the health care data of every American citizen. These developments could undermine the doctor-patient relationship and thus worsen the health care of millions of Americans. I, therefore, call on my colleagues to join me in repealing this latest threat to privacy and quality health care by cosponsoring the Medical Privacy Protection Resolution.