

Ownership of electronic health information must be addressed, article says

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Clarifying legal rights of patient control over electronic health records could be the key to making the best use of the huge amount of electronic medical information that the "Stimulus" funding will create in the next few years, according to a national commentary co-authored by a Wake Forest University and a Duke University faculty member.

When electronic health information is created "for each person in the United States by 2014," as is the aim of the recently passed American Recovery and Reinvestment Act of 2009 (ARRA, or the "Stimulus"), a massive amount of [medical information](#) will suddenly exist in a new form, for which no clear "ownership" laws or regulations exist.

This information could be used for great [societal benefit](#), such as medical research and improved patient care, but [legal uncertainty](#) about who owns the information "presents a major obstacle to integrating and using information about a single patient from various medical providers," according to a commentary that appears in the March 25 issue of the [Journal of the American Medical Association](#) (JAMA).

"This impending legal issue must be addressed very soon if we are to both protect patients' interests in their medical information and ensure that new information systems are put to their best uses," said Mark A. Hall, J.D., professor of law and of public health sciences at Wake Forest University and co-author of the commentary.

The use of [electronic health records](#) (EHRs) has been increasing in

recent years but they still are employed by only a small percentage of health care providers. ARRA aims to ramp up EHR deployment exponentially, allocating about \$20 billion toward the nationwide goal over the next five years.

Property rights in electronic information must be clarified in order for "effective, comprehensive and integrated medical information networks [to] emerge in the United States," the JAMA article says. With paper records, the article says, the concept of ownership was more straightforward: providers and insurance plans owned the paper, so they controlled the information.

"But now that digitizing information frees it [the information] from particular storage media," the paper says, "confusion reigns."

Normal property rights do not apply to patients and their medical records, the article says, because providers also have a right to the information so patients don't have sole possession or control. Instead, they have privacy rights to protect and control access to their records.

When it comes to sharing patients' information among multiple parties - for both health care purposes and broader societal uses - conflicting interests arise. In fact, if the "goal of property law is to bundle legal rights in a form that facilitates transactions and maximizes social value," the paper suggests, "the current situation is nearly the worst of two worlds."

"Strong privacy laws [favoring the patient] and clinicians' economic interests in limiting access to health records increase barriers to forming integrated electronic records," the commentary says. "This combination of low commercial value with restricted access leaves medical information lying stunted in an undernourished field."

Building a network among different electronic health records would be expensive, the article notes, so the "infomediary" who did this would need to clear authority to bundle and exercise the economic rights of multiple parties.

"With sufficient legal clarifications and protections," according to the article, "one can imagine a wide range of contractual agreements that license, bundle, or transfer patients' rights of access and control, to various parties under various conditions for a variety of applications."

"An intermediary could compile a bundle of patients' authorizations to use their information for research or marketing purposes; the compiler could, with patient authorization, then market these databases to permitted users or could transfer the bundled rights to a third party aggregator and marketer."

"Some earnings could flow back to patients or compensate participating clinicians. In this way, placing bundled rights to medical information into a stream of commerce could direct them toward their highest and best use."

A new system of patient-initiated control of health records could be the key to a successful system, the article maintains. Such a system could "loosen the logjam of competing interests and stimulate market mechanisms to make much larger investments in using and sharing electronic health information."

"No matter which path is taken toward a national goal," the article concludes, "clear but adaptable laws are needed so that stakeholders can assign economic value to the access, control and use of the medical information contained in electronic health record networks."

Source: Wake Forest University Baptist Medical Center ([news](#) : [web](#))

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