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POLITICS AND PUBLIC POLICY

Our Finest Hour

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On June 18, 1940, Sir Winston Churchill, prime minister of England, prepared his country for massive air attacks by Germany, which became known as the “Battle of Britain.” He said to his countrymen, “Let us therefore brace ourselves and so bear ourselves that if the British Empire and its Commonwealth last for a thousand years, men will still say, ‘This was their finest hour.’” After Britain successfully repelled the repeated attacks by the Wehrmacht, Churchill said about their young fighter pilots, “Never in the field of human conflict was so much owed by so many to so few.”

I was reminded of those inspiring historical events, certainly one of the major turning points in World War II, by the major role of this Association in protecting health care privacy for all Americans, which was included in the American Recovery and Reinvestment Act, signed into law by President Obama on February 17. This was the culmination of the most successful advocacy effort by the American Psychoanalytic Association to date and resulted in major health care privacy protections for 304 million Americans.

LEADING ROLE

While other groups were involved in achieving these results, our

Association played a leading role, along with Deborah Peel's "Patient Privacy Rights" and National Association of Social Workers (NASW), in obtaining strong privacy protections where none existed before. This is all the more remarkable, considering the massive lobby opposing such protections by such powerful groups as the insurance and managed care industries, the American Hospital Association, and the information technology industry (with the exception of Microsoft, which supported our stand).

The stimulus package included \$19 billion for the initiation of an electronic health records system. An all-encompassing Electronic Medical Records (EMR) system is being viewed by the Administration as an essential portion of their health care reform effort, and one they are certain will save money and improve care. Unfortunately this appears to be an unwarranted assumption, based on a single seriously flawed study by the Rand Corporation. Many studies suggest quite the opposite; i.e., health care quality is not improved, medical errors may in fact be increased. Estimates for "wiring" the country run to \$500 billion.

Nonetheless, **EMRs are viewed as a kind of "magic bullet" which will give the impression that Congress is taking significant steps to improve health care [possible pull quote] policy.**

In the beginning, the EMR legislation had almost no privacy protections, and most dangerous to us, private practice was not exempted from the requirement for interoperable electronic medical records. We were able to get this completely reversed, so that identifiable health information can be protected if the individual "has paid out of pocket in full" for the services.

Another critically important achievement was the recognition of the psychotherapist-patient privilege. Previously, we were protected only by the Supreme Court *Jaffee v. Redmond* decision. While this was vitally important, legal decisions are vulnerable to being overturned by legislation. The “privilege” is now officially encoded into law for the first time.

PROTECTING PRIVATE PRACTICE

To sum up our achievements: Private practice is protected, personal health information cannot be sold or marketed, the *Jaffee* privilege is protected, and practitioners can determine what is the “minimum necessary” information that has to be turned over to insurance companies for payment of claims. [See “*APsaA Secures Privacy Protections in Stimulus Bill*,” page ?? for further details].

Our Association has played a major role throughout this struggle which began during the last Congress, when Senators Hillary Clinton and Ted Kennedy introduced S.1418, the “Wired” bill. We were able to help stop this bill, with the help of several senators, most notably Senator Patrick Leahy(D) of Vermont. On the House side, Congressman Edward Markey(D-MA), working closely with us, introduced privacy principles into the *Pro(Tech)T Act* HR 6357. Like the Senate bill, the House bill also did not pass, but both the Senate and House bills were poised for the advent of the EMR effort in the stimulus package.

Ultimately, the *Pro(Tech)T Act* became the prototype for the privacy protections included in the stimulus bill. We owe special thanks to Representative Markey, whom our Association honored last year with a Special Presidential Award, and Senator Olympia Snowe (R-ME). Working closely with them, we

were able to play a leading role in both the House and Senate versions of the bill.

Over the past two years, a great many of our members have called their congressmen and senators with enormous effect. **The Association owes particular thanks to David Miller and Joanne Gold of the Washington Center for Psychoanalysis [another possible pull quote],** who worked doggedly to help achieve this victory.

Having established this successful beachhead, we have much more to do. We are now moving into the implementation phase, and any or all of these hard won achievements could be undermined by guidelines and regulations yet to be written. Certainly the health information technology (HIT) and insurance industries are already gearing up to try to roll back as many of those gains as they can. The secretary of Health and Human Services (HHS) has been empowered to enact a number of regulations in the coming months regarding implementation of HIT policy.

With the strong alliances we have developed, with our members who are increasingly active advocates for our patients and our profession, and with our respected leadership on Capitol Hill, our Association is in a very strong position to help defend and expand these privacy achievements.

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