

Federal Court of Appeals Rules No Private Cause of Action Under HIPAA

by Sandi J. Toll

On November 13, 2006, the United States Court of Appeals for the Fifth Circuit affirmed a decision by a Louisiana district court which concluded that individuals cannot bring private causes of action against their health care providers for violations of the Health Insurance Portability and Accountability Act (HIPAA). See *Acara v. Banks*, No. 06-30356, 2006 WL 3262444 (5th Cir. Nov. 13, 2006). While district courts throughout the country have repeatedly held that HIPAA does not support private causes of action, the

Fifth Circuit is the first federal circuit to specifically make this determination. Given the plain language of the HIPAA statute, it is likely that other federal circuits will soon follow the Fifth Circuit's lead.

In this case, Margaret Acara alleged that her doctor violated HIPAA's confidentiality provisions by failing to obtain her consent prior to disclosing her medical history during a deposition. As HIPAA does not explicitly provide individuals with a private cause of action for improper disclosure of confidential medical information, Ms. Acara could only

prevail if such a right is "implied" by the statute. Although HIPAA provides civil and criminal penalties for improper disclosures, the Fifth Circuit noted that the statute only allows the Secretary of the Department of Health and Human Services – a government entity – to enforce such penalties. Unfortunately for Ms. Acara, this specific delegation of enforcement authority strongly indicates that Congress intended to prohibit private enforcement claims. As no private cause of action exists under HIPAA, the lower court correctly denied Ms. Acara's claims.

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