

February 11, 2019

PUBLIC COMMENT LETTER

Roger Severino
Director, Office for Civil Rights
U.S. Department of Health and Human Services
Attention: RFI, RIN 0945-AA00
Humbert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201
Submitted electronically via: regulations.gov

Re: Request for Information on Modifying HIPAA Rules to Improve Coordinated Care; Docket No.: HHS-OCR-0945-AA00

Dear Director Severino:

On behalf of our more than 450 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association appreciates the opportunity to provide comments on the above-referenced RFI, published in the December 14, 2018 *Federal Register*, and the effort to remove obstacles and decrease burdens in order to facilitate efficient care coordination and to promote the transformation to value-based health care, while preserving the privacy and security of PHI. With that in mind, we submit the following:

- The requirement for business associate agreements should be eliminated, or a standard BAA form should be required. BAAs have become increasingly complex and require extensive review and negotiation – time and resources that are best used elsewhere.
- A standard, common timeframe should be established for the production of an individual's PHI by all covered entities. The creation of separate timeframes, based on the format of records or type of provider, would create unnecessary regulatory burdens and confusion for patients and providers.
- Our membership has faced delays and barriers in sharing PHI for treatment purposes where covered entities have denied access to patient medical records. One common occurrence in Texas is the scenario where a physician leaves a group practice to join another. The State of Texas indicates that such medical records may be owned by a physician's employer, subject to a written request from the patient for release of the records. Some practices will delay release of medical records on that basis, despite the underlying physician-patient relationship continuing at the new practice. This leads to unnecessary delays and burdens, and often requires the physician to incur costs in acquiring their patients' records. Regulations to require the timely release of patient records for continued treatment would be very helpful in this regard.

- An “opt out” provision for patients would create immense regulatory burdens, impede care coordination and delivery, and cause confusion among patients. Some of our members treat over 10,000 patients per day, and it is not technologically feasible to compartmentalize a patient’s medical record and apply separate sharing permissions.
- The lack of consistency between HIPAA and mental health privacy regulations is a major burden to facilitating efficient care coordination and management. Mental health privacy laws were enacted prior to HIPAA, and we suggest standardizing all health information privacy regulations under HIPAA standards to maximize consistency and access.
- The proposal to encourage sharing PHI with a patient’s family members, caregivers, and others in a position to avert threats of harm to health and safety, and when necessary to promote the health and recovery of those struggling with substance use disorder, should consider any operational and legal burdens created. For example, covered entities could face the threat of suit if patients or their legal representatives become upset that PHI was shared beyond legal authority.
- Our members report that patient requests for an accounting of disclosure are rare, despite the availability of comprehensive information on laws and policies governing use and disclosure of patient information. Such accountings create burdens for providers and do not lead to discernable improvements in patient care.
- Patients are overwhelmed by the sheer number of documents requiring signed acknowledgment, as required by state and federal regulation, or for legal, treatment or billing purposes. These include, but are not limited to, documents concerning payment and collection, informed consent, assignment of benefits, notice of privacy practices (NPP), and authorization for release of information. This distracts the patient from the most important document in the care continuum: the patient’s medical history form – which is of unparalleled importance.

Electronic signatures do not alleviate the burden of documents that require signature. The signature requirement should be eliminated and a posting of the NPP on a publically-available webpage should constitute sufficient disclosure. Some of our members make their NPP available in multiple languages, post the NPP in public areas, and make paper copies available. Updates to the NPP can be made via email, if the patient has the capability to receive it.

Please contact me at (512) 465-1027 or clopez@tha.org with any questions or comments, or if there is anything else THA can assist with. Thank you for your time and attention. THA looks forward to working with you on this issue.

Very truly yours,



Cesar J. Lopez
Associate General Counsel