

U.S. DEPARTMENT OF HEALTH AND
HUMAN SERVICES

**OFFICE FOR
CIVIL RIGHTS**

HIPAA Policy Update from the HHS Office for Civil Rights

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28th National HIPAA Summit
11:15- 12:15, March 5, 2019

Agenda

- OCR's RFI on Modifying HIPAA Rules to Improve Coordinated Care
 - How OCR gathers information and OCR rulemaking
 - Promoting information sharing for treatment and care
 - Addressing the opioid crisis and serious mental illness and promoting parental involvement in care
 - Accounting of disclosures of protected health information
 - Notice of Privacy Practices acknowledgment

Request for Information (RFI)

Published December 14, 2018

- Title: *Request for Information on Modifying HIPAA Rules To Improve Coordinated Care*
- Comments closed February 12, 2019
- More than 1,330 timely comments received
- 3,823 total pages (estimated)
- Public comments are viewable at <https://www.regulations.gov/docket?D=HHS-OCR-2018-0028>.

The RFI Sought Information on Four Subject Areas

1. Promoting information sharing for treatment and care coordination
2. Addressing the opioid crisis and serious mental illness and promoting parental involvement in care
3. Accounting of disclosures of PHI
4. Notice of Privacy Practices acknowledgement

Promoting Information Sharing For Treatment and Care Coordination

- Individual Right of Access
- Required Disclosures
- Minimum Necessary Standard
- Disclosures to Non-Covered Entities for Coordinated Care and Related Health Care Services and Support

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Treatment and Care Coordination: Overview of Current HIPAA Provisions

- Covered entities may disclose PHI without patient authorization for treatment, payment, and health care operations (TPO).
- Individual patients have a right to obtain access to their PHI; covered entities are required to disclose an individual's PHI to him/her; and individuals may direct copies of such PHI to a third party.
- Generally requires covered entities to limit uses and disclosures to the minimum PHI necessary to meet the purpose of the use or disclosure. One exception to the minimum necessary standard is disclosures to or requests by a health care provider for treatment purposes.

Sharing Mental and Behavioral Health Information: Overview of Current HIPAA Provisions

- HIPAA allows providers to share PHI with family, friends, and others involved in care with patient agreement; or as needed in an emergency, based on professional judgment.
- HIPAA's provisions on personal representatives defer to state laws designating who has authority to make health care decisions on behalf of an individual (e.g., parents of a minor).
- HIPAA treats mental health and substance use disorder treatment information the same as other PHI, except for psychotherapy notes of a mental health professional.
- HIPAA permits disclosures necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, based on a good faith belief of the CE.

Accounting of Disclosures (AoD): Overview of Current HIPAA Provisions

- Requires covered entities to provide an individual, upon request, with an accounting of certain disclosures of the individual's PHI made by the covered entity (or its business associate).
- The HITECH Act requires that accountings include disclosures for treatment, payment, and health care operations (TPO) through an electronic health record (EHR).
- HHS issued an NPRM in 2011 on accounting of disclosures (AoD), but did not issue a final rule. The RFI states OCR's intent to withdraw the 2011 NPRM.

Notice of Privacy Practices and Acknowledgement of Receipt: Overview of Current HIPAA Provisions

- The NPP informs an individual of how a covered entity may use and disclose their PHI, and of their rights and the covered entity's obligations with respect to that PHI.
- Covered providers and health plans must provide an NPP.
- Covered health care providers with a direct treatment relationship must:
 1. make a good faith effort to obtain an individual's written acknowledgement of receipt of the provider's NPP; and
 2. maintain for six years documentation of each written acknowledgement or good faith effort to obtain an acknowledgement and reason why written acknowledgement was not obtained.

Questions

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