

eHEALTH INITIATIVE

HIPAA NPRM eHI Policy Briefing

April 20, 2021



Overview

- Published in the Federal Register on January 21; comment deadline extended until May 6
- The proposed rule focuses on clarifying and amending existing HIPAA provisions to facilitate the delivery of coordinated, value-based care
- First major changes proposed to HIPAA since the 2009 stimulus act



Big Picture

- Intent is to “support individuals’ engagement in their care, remove barriers to coordinated care, and reduce regulatory burdens on the health care industry”
- Part of previous administrations’ push to increase information flow, and in particular to get health data into the hands of patients and care-givers
- Proposed rule comes two years HHS’ OCR issued an RFI on how the agency could update the HIPAA Privacy Rule to make it easier to share PHI among health care providers, payers, patients and caregivers
- Also driven by the pandemic, during which issues of privacy and public health took on new significance
- Comes on heels of the sweeping Interoperability and Information Blocking rules, which also are focused on expanding individual access to health data



Big Picture

- HIPAA is often erroneously cited as a barrier to disclosures that are in fact permitted under the law and its regulations; these proposed revisions both expand and make clearer the circumstances under which and the people to whom information can be disclosed
- Although the intent is admirable and there is general support for the modifications, there are concurrent privacy risks; health data outside the traditional healthcare system is under-protected and vulnerable



Access Provisions

- Key proposals around patient access focus on:
 - Shortening covered entities' required response time to 15 days
 - Strengthening right to inspect records in person
 - Clarifying form and format required for responding to requests for PHI
 - Specifying when PHI must be provided at no cost and requiring price transparency
 - Reducing the identity verification burden



Disclosure Provisions

- Key proposals regarding disclosure focus on expanding the permissibility of disclosures of PHI :
 - That are in the best interest of those experiencing health emergencies or crises, including SMI and SUD
 - To prevent harm or lessen chance of harm
 - To enable care coordination (via exception to “minimum necessary” standard)
 - To facilitate care provided by social and community services



Additional Provisions

- Notice of Privacy Practices
 - Proposes to remove requirement for CE to obtain written acknowledgement of a direct treatment provider's NPP, and associated requirement to retain copies of such acknowledgement for 6 years
- Telecommunications Relay Service
 - Proposes to permit disclosure to TRS and remove TRS classification as BA – to solve issue of employees of CE who need to use TRS as a function of their employment with CE
- Uniformed Services
 - Extend the permission to disclose PHI of Armed Forces personnel to that of U.S. Public Health Service (USPHS) Commissioned Corps and the National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps

