

February 11, 2019

Roger Severino
Director, Office for Civil Rights
U.S. Department of Health and Human Services
Humbert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Re: Request for Information on Modifying HIPAA Rules to Improve Coordinated Care (RIN 0945-AA00)

Dear Director Severino:

The Florida Hospital Association (FHA), on behalf of its more than 200 member hospitals and health systems, welcomes the opportunity to respond to the Centers for Medicare & Medicaid Services' (CMS) Request for Information (RFI) on modifying the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rules to improve coordinated care. While our member hospitals and health systems are dedicated to safeguarding the privacy of patients' medical information, we believe that the current HIPAA rules generally offer an effective framework that permits covered entities to share patients' protected health information (PHI) for the purposes of treatment, payment and health care operations. There are a few issues, however, that seem to create barriers to the use and disclosure of patients' PHI necessary to support high-quality care, care coordination and population health improvement. These issues are the focus of the comments that follow.

We urge CMS to remove the HIPAA regulation's current barriers to sharing patient information for clinically integrated care. The existing regulation restricts the sharing of a patient's medical information for health care operations such as quality assessment and improvement activities, including outcomes evaluation, or activities that relate to the evaluation of provider qualifications, competence, or performance, to information about those patients for whom both the disclosing and receiving providers have (or have had) a patient relationship. The challenge that strict regulatory prohibition poses in the integrated care setting is that frequently patients do not have a relationship with all of the providers with whom information should be coordinated.

A clinically integrated setting and each of its providers must focus on and be accountable for all patients. Achieving the meaningful quality and efficiency improvements that a clinically integrated setting promises requires that all participating providers be able to share and conduct population-based data analyses. The HIPAA medical privacy regulation should permit a patient's medical information to be used by and disclosed to all participating providers in an integrated setting without requiring that individual patients have a direct relationship with all of the organizations and providers that technically use and have access to the data.

In addition, we urge modification to the rules to allow treating providers to access their patients' substance use disorder records. Current requirements necessitate individual patient's consent for access to addiction records from federally funded substance use treatment programs – creating an obstacle to an integrated approach to patient care and, possibly, unknowingly endanger a

person's life. Clinicians treating patients for any condition need access to their complete medical histories, including information related to any substance use disorder, to ensure patient's safety and the delivery of the highest quality care. Partitioning a patient's record to keep substance use disorder diagnoses and treatments hidden from the clinicians caring for the patient, as required by 42 CFR Part 2, is dangerous for the patient, problematic for providers and contributes to the social stigma of mental and behavioral health conditions.

The separateness of the current law appears to stress the social harms that could result from disclosing substance use disorder information rather than the risk of medical harm, including overdose and even death, as a result of the lack of care coordination for these patients. The requirements for sharing patients' substance use records should be aligned with the requirements in the HIPAA regulation that allow the use and disclosure of patient information for treatment, payment, and healthcare operations. Doing so would improve patient care by ensuring that providers and organizations who have a direct treatment relationship with a patient have access to the complete medical record. Applying the same requirements to all patient information – both behavioral and medical – would support the appropriate information sharing essential for clinical care coordination and population health improvement, while safeguarding patient information from unwarranted disclosure.

Finally, we would support full federal preemption under HIPAA. The existing privacy standards indicate that state laws that are contrary to the federal law will be preempted, except in those cases where the state laws (a) are more stringent than the HIPAA privacy standards; (b) provide for the reporting of disease or injury, child abuse, birth or death, or for public health surveillance, investigation, or intervention; or (c) require health plans to report or provide access to information on management or financial audits, program monitoring, or licensure or certification of facilities or individuals. In addition, the Department of Health and Human Services may grant an exception in certain defined situations that would allow a state privacy law to continue in force. An analysis of the preemptive effect of the HIPAA privacy regulation is a complicated and difficult undertaking – and one that must be done on a near annual basis as new legislation is passed at the state level. Competing requirements at the state level leaves the provider subject to confusion, a lack of certainty as to which rules to follow, and restricts the goal of coordinated clinical treatment, often to varying degrees across the states.

The FHA appreciates the opportunity to provide these comments on modifying the HIPAA rules to improve coordinated care. If there are questions on these comments, please do not hesitate to contact me at kathyr@fha.org.

Sincerely,



Kathy Reep
Vice President/Financial Services