



February 8, 2019

Alex M. Azar II
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201
Submitted electronically to <http://www.regulations.gov>

Re: HHS-OCR-0945-AA00; Request for Information on Modifying HIPAA Rules to Improve Coordinated Care

Dear Secretary Azar:

Nemours Children's Health System (Nemours) appreciates the opportunity to provide comments on the Department of Health and Human Services (HHS), Office for Civil Rights (OCR) Request for Information (RFI) on modifying Health Insurance Portability and Accountability Act (HIPAA) rules to improve coordinated care.

Nemours is an internationally recognized children's health system that owns and operates the Nemours/Alfred I. duPont Hospital for Children in Wilmington, Del., and Nemours Children's Hospital in Orlando, Fla., along with outpatient facilities in six states, delivering pediatric primary, specialty, and urgent care to children from all 50 states. Established as The Nemours



Nemours is not aware of examples where a health care provider wo



information to a treating provider and disclosing that information to a parent or guardian. The rules surrounding each type of disclosure should be distinct as well.

Question #16: What considerations should OCR take into account to ensure that a potential Privacy Rule requirement to disclose PHI is consistent with rulemaking by the Office of the National Coordinator for Health Information Technology (ONC) to prohibit information blocking, as defined by the 21st Century Cures Act?

As stated previously, we believe that a barrier to information exchange is a misalignment of incentives. A fee-for-service payment model can disincentivize information sharing between providers. As long as providers are paid according to volume, sharing patients and reducing duplication will likely result in a reduction in revenue.

However, privacy policies governing information exchange in a value-based health care system should be nuanced, as discussed in previous questions, to ensure that information exchange is appropriate and centered on the best interest of the individual. The minimum necessary requirement may already address some of these concerns, but special attention and care should be paid to sensitive categories of PHI, especially for adolescents, to ensure that disclosures do not inadvertently harm the patient when information is shared with multi-disciplinary teams.

Question #21: Are there provisions of the HIPAA Rules that work well, generally or in specific circumstances, to facilitate care coordination and/or case management? If so, please provide information about how such provisions facilitate care coordination and/or case management. In addition, could the aspects of these provisions that facilitate such activities be applied to provisions that are not working as well?

HIPAA has been effective in promoting electronic exchange of records, and does not require additional consent exchange related to treatment and care coordination, which is extremely helpful. Challenges arise when organizations look to state laws that are more restrictive and therefore choose not to share records without consent. More consistency among state privacy laws would be very helpful. In the absence of consistent state laws, however, additional guidance from OCR providing a crosswalk of state and federal law interdependencies would be extremely helpful.

One area that could be improved is the intersection between HIPAA and FERPA, particularly in instances where health providers work with school health clinics to care for school-age children. The lack of alignment between these two federal laws can be a barrier to case management and care coordination. **Nemours recommends that PHI generated at a school health clinic be covered by HIPAA requirements, rather than by FERPA.** For example, patient information collected by a nurse in a school health clinic should be classified as health information and not educational information. In its current state, FERPA requirements are too restrictive to promote information exchange with health providers, and may not protect health information from being shared with non-health providers in a school system.



Promoting Parental and Caregiver Involvement and Addressing the Opioid Crisis and Serious Mental Illness (SMI)

Question #24: Are there circumstances in which parents have been unable to gain access to their minor child's health information, especially where the child has substance use disorder (such as opioid use disorder) or mental health issues, because of HIPAA? Please specify, if known, how the inability to access a minor child's information was due to HIPAA, and not state or other law.

Nemours has not experienced circumstances in which parents or guardians have been unable to gain access to their minor child's health information due to HIPAA rules. However, Nemours is aware that state and federal regulations prohibit disclosures of certain categories of an adolescent patient's PHI without consent, such as mental health, substance use and sexual health



involvement, what limitations should apply to respect the privacy interests of the individual receiving treatment?

Nemours does not endorse modifying HIPAA laws to allow for greater access to an



As the policy and payment landscape shifts, HIPAA regulations should be re-examined and refreshed to ensure that they are not inappropriately inhibiting cross-sector data sharing, while ensuring protections for patient privacy.

Conclusion

Nemours sees great value in accelerating pediatric population health improvement and health system transformation. We are committed to both patient privacy and care coordination and see the value in both. We thank you for the opportunity to provide comments. Please do not hesitate to have your team reach out to Amber Hewitt, Manager of Policy & Advocacy at amber.hewitt@nemours.org with any questions or requests for additional information.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kevin D. Haynes", on a light-colored rectangular background.

Kevin D. Haynes
Chief Privacy Officer
Nemours Children's Health System