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330 East Algonquin Road • Suite 1
Arlington Heights, IL 60005
Phone: 847.952.5100
Fax: 847.228.9755
www.acofp.org

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April 22, 2021

VIA ELECTRONIC SUBMISSION

Robinsue Frohboese
Acting Director and Principal Deputy
Office for Civil Rights
Department of Health and Human Services
RIN 0945-AA00
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Acting Director Frohboese:

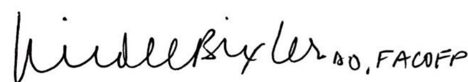
On behalf of the American College of Osteopathic Family Physicians (ACOFP), we appreciate the opportunity to comment on the Department of Health and Human Services (HHS) notice of proposed rulemaking (NPRM) titled, *Proposed Modifications to the HIPAA Privacy Rule to Support, and Remove Barriers to, Coordinated Care and Individual Engagement*.

ACOFP is the professional organization representing more than 18,000 practicing osteopathic family physicians, residents and students throughout the United States who are deeply committed to advancing our nation's health care system by improving health care delivery and outcomes and ensuring that patients receive high-quality care.

As an organization of family physicians, we appreciate HHS's efforts to improve value-based care through better care coordination and case management. The NPRM's proposed modifications are a step in the right direction for both providers and patients. However, we urge HHS to ensure that providers are not overly burdened from new requirements, especially during the COVID-19 pandemic.

Our full comments are detailed on the following pages. Thank you for the opportunity to share our feedback with you. Should you need any additional information or if you have any questions, please feel free to contact ACOFP at advocacy@acofp.org or (847) 952-5100.

Sincerely,



Nicole Bixler, DO, MBA, FACOFP
ACOFP President

On January 21, 2021, the HHS Office for Civil Rights (OCR) published a notice of proposed rulemaking (NPRM)[1] that would modify privacy standards under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH). The modifications are intended to address standards that may impede the health care system's transition to value-based care by limiting or discouraging care coordination and case management communications among individuals and covered entities (e.g., physicians, hospitals and insurers).

ACOFP supports the NPRM's proposals to improve care coordination and case management. However, we want to ensure that the proposed modifications do not inadvertently create additional administrative burden for physicians, especially those in solo and small family physician practices, during the COVID-19 pandemic.

In response to the pandemic, family physicians have incurred increased costs by deploying telehealth systems and purchasing personal protective equipment to ensure their patients can receive high-quality primary care. These increased expenses have placed considerable financial pressures on many solo and small physician practices. Unlike hospitals or large physician groups, family physicians do not have an abundance of resources to respond to the financial pressures caused by the pandemic. New regulations that require additional practice changes and staff training may further burden small and independent practices.

HHS estimates the policies in the NPRM would cost covered entities up to $696 million in the first year to revise or develop new policies and procedures as well as train staff.[2] While savings are projected for covered entities over a five-year period, we urge HHS to provide flexibility for solo and small practices. In particular, providers should have additional time to implement the proposals related to protected health information (PHI) requests and patient PHI inspection.

PHI Requests

Under current rules, individuals are allowed to inspect or obtain a copy of their PHI[3] from a covered entity upon request. The NPRM proposes to shorten the response time for PHI requests from individuals to 15 days (down from 30 days).[4] Additionally, the NPRM proposes to require covered entities to establish written policies for prioritizing urgent or high priority requests.

We agree that patients should have access to their health information and are continually working with patients to ensure they can obtain their information as soon as possible. However, some physician practices—especially small and solo practices with limited resources—may not have the resources to quickly change their practices and/or develop policies for urgent or high-priority requests in order to accommodate this shortened timeline.

We urge HHS to provide solo and small physician practices additional time to implement this policy, if finalized. Furthermore, we ask HHS to consider an exception to the 15-day response period for solo and small physician practices at least during the COVID-19 pandemic to ensure they can devote resources to patient care rather than developing and implementing new practice policies. Finally, we recommend that HHS retain the 30-day response time requirement for solo and small physician practices at least for the duration of the COVID-19 pandemic.

Patient PHI Inspection

The NPRM would allow individuals to take notes, photographs and videos and use other resources to capture their PHI. We support patients' rights to inspect their PHI and are generally supportive of allowing individuals to take steps to do so. We believe this can help individuals take a proactive role in managing their health care. Although we want to empower patients to take control of their care, this policy should not unduly disrupt or

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[1] 86 Fed. Reg. 6446 (Jan. 21, 2021) available here https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2020-27157.pdf
[2] Id. at 6489
[3] Described as "individually identifiable health information maintained or transmitted by or on behalf of HIPAA covered entities" See Id. at 6447
[4] State law with shorter time periods are not pre-empted by this proposal.

unnecessarily increase the duration of a patient visit. HHS should consider guardrails that would allow a provider to facilitate the capturing of PHI without inhibiting care delivery during the patient-doctor interaction.

Overall, we believe the NPRM will be helpful for providers and patients. It will improve the exchange of information for HIPAA covered entities and create efficiencies in the health care system generally. We applaud HHS's work on the NPRM but urge the agency to provide flexibility for providers, including family physicians' practices, to implement these requirements gradually over time or delay the effective date of these requirements so physicians can focus on their patients during the COVID-19 pandemic. We also urge HHS to consider an exception for solo and small physician practices to comply with response time for patient PHI requests, so they continue to have 30 days to respond to PHI requests for at least the duration of the COVID-19 pandemic.

Thank you for your consideration of our comments. We look forward to working with the agency to continue to improve care coordination and case management.