

The National Alliance to Impact the Social Determinants of Health

AN ALLIANCE CONVENED BY LEAVITT PARTNERS

February 12, 2019

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

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

Dear Director Severino,

On behalf of the National Alliance to impact the Social Determinants of Health (NASDOH), we appreciate the opportunity to provide our collective comments on how the Health Insurance Portability and Accountability Act (HIPAA) Rules could better promote coordinated and value-based health care, particularly as it relates to the ability of covered entities to disclose protected health information (PHI) to social service agencies.

NASDOH is a group of stakeholders working to systematically and pragmatically build a common understanding of the importance of addressing social needs as part of an overall approach to health improvement. We seek to make a material improvement in the health of individuals and communities and, through multi-sector partnerships within the national system of health, advance holistic, value-based, person-centered health care that can successfully impact the social determinants of health. NASDOH brings together health care, public health and social services expertise, local community experience, community-convening competence, business and financial insight, technology innovation, data and analytics competencies, and policy and advocacy acumen to assess and address current regulatory frameworks, funding environments and opportunities, and practical challenges to implementing and sustaining social determinants of health efforts.

Sharing information across organizations and sectors is integral to addressing social needs in communities throughout the nation. Below, NASDOH offers recommendations on several questions posed in the RFI related to the scope of covered entities' ability to disclose PHI to social service agencies:

Question 18 – *Should the Office for Civil Rights (OCR) modify the Privacy Rule to clarify the scope of covered entities' ability to disclose PHI to social services agencies and community-based support programs where necessary to facilitate treatment and coordination of care with the provision of other services to the individual?*

Overall, NASDOH believes that the HIPAA Rules allow information to flow while keeping as their core tenet the security and privacy of data. While our recommendation is not to make fundamental changes to the HIPAA Rules, we do encourage OCR to provide clarity on what is currently allowed under the law with respect to sharing information with non-covered entities. Specifically, we would suggest OCR release clarifying guidance and/or facilitate greater education on what specifically the law allows. Providing greater education to stakeholders regarding the provisions of the HIPAA Rules will help covered entities, social service agencies, and community support programs avoid any misinterpretation or misapplication of the law and allow all stakeholders and individuals to utilize, and benefit from, the broad applicability permitted under the law.

In addition, fear and uncertainty exist about whether the HIPAA Rules allow information sharing with non-covered entities. As a result, we find that many entities and individuals are not sharing information even when it is allowable under the HIPAA Rules. To ease confusion and concern, NASDOH suggests that the OCR develop improved tools and training to accompany clarification of the HIPAA Rules. However, to avoid delaying innovative approaches because of time spent debating acceptability of a use or interpretation based on formal guidance issued at wide intervals, NASDOH suggests

guidance and training be augmented by a U.S. Department Health and Human Services (HHS) mechanism to respond to agencies' requests for clarification.

Furthermore, while a significant amount of data and information that may be shared by non-covered entities is either directly health-related or used for health, the members of NASDOH recognize that much of this information falls outside of the scope of the HIPAA Rules. This includes health information generated by entities not covered by HIPAA, non-health information on which inferences about health are based, and user-generated health information. We welcome policy discussions about how non-covered entities can appropriately manage data sharing in a way that successfully addresses social needs while complying with the Privacy Rule.

Question 19 – *Should OCR expressly permit disclosures of PHI to multi-disciplinary/multi-agency teams tasked with ensuring that individuals in need in a particular jurisdiction can access the full spectrum of available health and social services?*

NASDOH supports the disclosure of PHI to entities offering health and social services so long as these entities have the appropriate infrastructure in place to successfully secure and protect PHI to the same degree such information is protected by the HIPAA Rules. Efforts to address social risk require robust data collection that includes social and behavioral risk factor data and information. NASDOH believes security and privacy should be paramount to collecting these data. However, a central roadblock to ensuring that individuals access the right health and social services is understanding the impact of the various services provided on the desired outcome. Yet the ability to measure the very outcomes sought rely upon information sharing across the community. When non-traditional participants in health and social services have the appropriate infrastructure in place to keep the information safe and secure, access to and the flow of the full spectrum of available health and social services information will allow all stakeholders to better understand the impact of care coordination on the desired outcome.

Furthermore, clarification and guidance to covered entities about consumers' rights and how best to comply with consumers' invocation of the individual right of access and direction of health information to third parties is necessary. Patients should be the ultimate decision maker of care team services and by providing them with access and control of their own health information, patients can more actively participate in their care coordination. Care coordination is not something that should happen to the patient, but with the patient. OCR can accomplish the goal of better coordination with non-traditional participants in health care while ensuring the consumer maintains their ability to direct their health information.

We appreciate the opportunity to provide NASDOH's views and recommendations on how OCR can modify the HIPAA Rules to clarify and better promote coordinated and value-based health care. We are happy to discuss any of the information outlined above or provide further assistance that would be valuable. For more information on NASDOH, please visit our website at www.nasdoh.org.

Sincerely,



Vince Ventimiglia
President, Leavitt Partners Collaborative Advocates and Advisor to NASDOH