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May 13, 2013

Mr. Leon Rodriguez
Director
Office for Civil Rights
Department of Health and Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Mr. Rodriguez:

Thank you for appearing before the Subcommittee on Oversight and Investigations on Friday, April 26, 2013, to testify at the hearing entitled, "Does HIPAA Help or Hinder Patient Care and Public Safety?"

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions by the close of business on Tuesday, May 28, 2013. Your responses should be e-mailed to the Legislative Clerk in Word format at brittany.havens@mail.house.gov and mailed to Brittany Havens, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, D.C. 20515.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Tim Murphy
Chairman
Subcommittee on Oversight and Investigations

cc: Diana DeGette, Ranking Member, Subcommittee on Oversight and Investigations

Attachment

Attachment—Additional Questions for the Record

The Honorable Tim Murphy

1. In your prepared testimony, you wrote: “be assured that OCR’s enforcement efforts are not directed toward imposing penalties on health care providers who make good faith efforts to comply with the Privacy Rule with regard to communications with patients’ family members and friends.” What will your office do, after this hearing, to make sure this is more widely known?
2. As a general matter, how much discretion is left up to OCR in deciding whether to pursue penalties and corrective measures against a covered entity at all? What types of HIPAA privacy rule complaints are most likely to result in OCR taking corrective measures or imposing penalties? What guides OCR’s discretion? What factors does OCR consider?
3. Are you concerned that the increased penalties for HIPAA privacy rule noncompliance that recently went into effect pursuant to the HITECH Act will make covered entities even more hesitant than before to share protected health information? Why or why not? Is OCR doing anything to address this preemptively?
4. For which states does the HIPAA Privacy Rule prohibit state mental health facilities from submitting records for individuals who have been involuntarily committed or adjudicated as mentally defective to the National Instant Criminal Background Check System?
5. What is the nature or structure of those facilities that creates the conflict with the Privacy Rule?
6. What options do the parents of a young, mentally ill, adult have if: their child’s healthcare provider believes (perhaps falsely) that the HIPAA Privacy Rule prevents them from sharing information with the family, the child has refused to sign a release granting access to his health records to the parents, and a judge who has reviewed the case believes that the child has the right to refuse disclosure of his records because during a court appearance the child seemed to be of sound mind? Does HIPAA provide an exemption for such circumstances?

The Honorable Steve Scalise

1. What is the controlling factor to determine the age that a person gains Federal HIPAA rights? Is that governed by state or Federal law? Are there different standards and qualification ages for HIPAA in different states?
2. How many different institutions and medical providers have been found in violation of Federal HIPAA laws over the past 5 years? What was the amount of the fines paid in the last 5 years? By how many violators?

3. If a potentially suicidal patient is released to an outpatient setting from a hospital or other institution, should the doctor be required to contact the outpatient medical provider? Would it be a violation of HIPAA if they did so?
4. If a doctor deems an outpatient is at “high risk for suicide or other bad outcomes,” is it a violation of HIPAA for the medical provider to notify the parents or consult with family members with which the patient is living? Should the doctor be mandated to notify the other family members that the patient is a “high risk for suicide or other bad outcomes,” and what to watch out for at home?

The Honorable Bill Cassidy

1. Has HHS issued guidance which clearly states how a physician should handle the privacy rule when their patient is in a state of psychosis or other form of mental incapacitation? If this guidance exists, does it take into account the fact that oftentimes, an individual’s disease influences them to reject the sharing of their health records, even if it is in their best interest?
2. Does OCR plan to release sub-regulatory guidance to explain—in terms that apply to medical professionals—the instances in which an individual’s mental illness would constitute “incapacity”? If so, when can this guidance be expected and how will you ensure it reaches the provider level?
3. Panelist Carol Levine said that... *“When family caregivers ask about their patient’s care, they are routinely told ‘I can’t tell you because of HIPAA.’ This is not only contrary to the law; it is not good clinical care and jeopardizes the patient’s well-being.”* Is there a “public friendly” federal government website that addresses these common misinterpretations and clarifies the Privacy Rule to which a family member in this situation could direct a physician or hospital administrator? If so, is there a strategy or effort to disseminate this information?
4. I understand that mental health and addiction Electronic Health Records (EHRs) are being shut out of state and local Health Information Exchanges (HIEs) because of aggressive federal interpretations of HIPAA and 42 CFR Part 2. As far as I know, Kentucky and Rhode Island are the only state HIEs in the nation that actually share behavioral health EHRs. Can HHS promulgate sub-regulatory guidance that will permit the sharing of behavioral health EHRs without changes to HIPAA or Part 2?
5. It is the current policy of the OCR, ONC, and SAMHSA to require a patient to sign a new consent form every time a new provider joins a Health Information Exchange? In cases of serious mental illness, this is often not a practical expectation. Would HHS support, and issue guidance, that would permit a patient to opt-in or opt-out of sharing their mental health or addiction Electronic Health Records (EHRs) in Health Information Exchanges (HIEs) without requiring the patient to sign a new form every time a new provider joins the HIE?

The Honorable G.K. Butterfield

1. It is my understanding that health care providers covered by the HIPAA “Privacy Rule”, must notify patients if the privacy of their health information is breached. What methods are used to notify those individuals? How does the Office of Civil Rights (OCR) ensure that health care providers are complying with the HIPAA “Privacy Rule”? What steps can individuals take if their health care record privacy has been compromised?
2. If a patient objects to sharing information with certain family members or friends, is the provider able to communicate that request to other providers who may also treat the patient?

The Honorable John D. Dingell

1. Does current law prohibit people who are involuntarily committed to a mental institution or otherwise formally adjudicated as having a serious mental condition from owning a firearm?
2. Are states required to upload mental health records into NICS so individuals who are prohibited from owning a firearm do not have access to them?
3. Current law provides for an exception to the HIPAA privacy rule for certain law enforcement purposes. Do you believe this exception permits states to report mental health records to NICS?
4. Do you believe states need to pass their own laws to explicitly permit mental health reporting to NICS if the privacy rule is amended in the manner described in the Advanced Notice of Proposed Rulemaking?