

Note: the section below is a direct extract from pages 6447 and 6448 of the Federal Register published on 1/21/2021. The bullet points (•) and sub bullet points (○) are indented in the formatting below to help in the readability of the text...Frank Ruelas

B. Summary of Major Provisions

The Department proposes to modify the Privacy Rule to increase permissible disclosures of PHI and to improve care coordination and case management by:

Adding definitions for the terms electronic health record (EHR) and personal health application.

Modifying provisions on the individuals' right of access to PHI by:

- Strengthening individuals' rights to inspect their PHI in person, which includes allowing individuals to take notes or use other personal resources to view and capture images of their PHI;
 - shortening covered entities' required response time to no later than 15 calendar days (from the current 30 days) with the opportunity for an extension of no more than 15 calendar days (from the current 30-day extension);
 - clarifying the form and format required for responding to individuals' requests for their PHI;
 - requiring covered entities to inform individuals that they retain their right to obtain or direct copies of PHI to a third party when a summary of PHI is offered in lieu of a copy;
 - reducing the identity verification burden on individuals exercising their access rights;
 - creating a pathway for individuals to direct the sharing of PHI in an EHR among covered health care providers and health plans, by requiring covered health care providers and health plans to submit an individual's access request to another health care provider and to receive back the requested electronic copies of the individual's PHI in an EHR;
 - requiring covered health care providers and health plans to respond to certain records requests received from other covered health care providers and health plans when directed by individuals pursuant to the right of access;
 - limiting the individual right of access to direct the transmission of PHI to a third party to electronic copies of PHI in an EHR;
 - specifying when electronic PHI (ePHI) must be provided to the individual at no charge;
 - amending the permissible fee structure for responding to requests to direct records to a third party; and
 - requiring covered entities to post estimated fee schedules on their websites for access and for disclosures with an individual's valid authorization and, upon request, provide individualized estimates of fees for an individual's request for copies of PHI, and itemized bills for completed requests.
- Amending the definition of health care operations to clarify the scope of permitted uses and disclosures for individual-level care coordination and case management that constitute health care operations.

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- Creating an exception to the “minimum necessary” standard for individual-level care coordination and case management uses and disclosures. The minimum necessary standard generally requires covered entities to limit uses and disclosures of PHI to the minimum necessary needed to accomplish the purpose of each use or disclosure. This proposal would relieve covered entities of the minimum necessary requirement for uses by, disclosures to, or requests by, a health plan or covered health care provider for care coordination and case management activities with respect to an individual, regardless of whether such activities constitute treatment or health care operations.
- Clarifying the scope of covered entities' abilities to disclose PHI to social services agencies, community-based organizations, home and community based service (HCBS) providers, and other similar third parties that provide health-related services, to facilitate coordination of care and case management for individuals.
- Replacing the privacy standard that permits covered entities to make certain uses and disclosures of PHI based on their “professional judgment” with a standard permitting such uses or disclosures based on a covered entity's good faith belief that the use or disclosure is in the best interests of the individual. The proposed standard is more permissive in that it would presume a covered entity's good faith, but this presumption could be overcome with evidence of bad faith.
- Expanding the ability of covered entities to disclose PHI to avert a threat to health or safety when a harm is “serious and reasonably foreseeable,” instead of the current stricter standard which requires a “serious and imminent” threat to health or safety.
- Eliminating the requirement to obtain an individual's written acknowledgment of receipt of a direct treatment provider's Notice of Privacy Practices (NPP).
- Modifying the content requirements of the NPP to clarify for individuals their rights with respect to their PHI and how to exercise those rights.
- Expressly permitting disclosures to Telecommunications Relay Services (TRS) communications assistants for persons who are deaf, hard of hearing, or deaf-blind, or who have a speech disability, and modifying the definition of business associate to exclude TRS providers.
- Expanding the Armed Forces permission to use or disclose PHI to all uniformed services, which then would include the U.S. Public Health Service (USPHS) Commissioned Corps and the National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps.