



advocacy | action | answers on aging

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February 12, 2019

The Honorable Alex M. Azar II
Secretary of Health and Human Services
U.S. Department of Health and Human Services
Hubert H. Humphry Building
200 Independence Avenue, SW
Washington, DC 20201

via electronic submission via <http://regulations.gov>

**RE: HHS-OCR-O9454-AA00, Comments in Response to
Request for Information on Modifying HIPAA Rules to
Improve Coordinated Care**

Dear Secretary Azar:

Thank you for the opportunity to comment on the Health and Human Services Office for Civil Rights (OCR) request for information regarding whether policy and/or regulatory changes are needed to ensure that the Health Insurance Portability and Accountability Act (HIPAA) does not impede the ongoing transformation to value-based health care or discourage coordinated care for patients. On behalf of the National Association of Area Agencies on Aging, which represents the country's 622 Area Agencies on Aging (AAAs) and serves as a voice in Washington for more than 250 Title VI Native American aging programs, we enthusiastically encourage OCR to consider HIPAA policy changes that would reflect and support the transformation to value-based care.

**The Aging Network Is a Vital Stakeholder in the
Transformation Toward Value-Based Care**

In nearly every community, n4a members develop and deliver local aging programs to help millions of older Americans and their caregivers get the support they need to age successfully at home and in their communities. AAAs have a 40-year history of

coordinating and providing a wide range of service options to connect older adults with home and community-based services (HCBS). Examples of this assistance include core services such as in-home supports (e.g., homemaker/chore services), home-delivered and congregate meals, transportation, case management and elder rights activities. Maximizing public-private partnerships, AAAs work with tens of thousands of local providers and vendors to deliver these critical home and community-based services to millions of older adults and caregivers annually.

This collective system is known as the National Aging Network, which has been functioning efficiently and effectively for more than four decades. Historically, AAAs have provided these services through federal Older Americans Act (OAA) programs and state Medicaid HCBS waivers. However, increasingly, AAAs and other CBOs within the Aging Network have been key partners in the transformation toward value-based, integrated health care in both Medicaid and Medicare. Because AAAs are experts at providing the community-based social services and supports that address health-related social needs, AAAs are increasingly working with health care partners on innovative models to improve the health of older adults.

In serving this population in their homes and communities, AAAs operate at a critical nexus between acute medical care providers—including hospitals, physicians, insurance companies and other payers—that are “covered entities” under HIPAA and community-based support services, which are vital to improving health outcomes and maintaining health for many patients. As the populations of older adults and their caregivers have increased, driving higher levels of demand and a wider array of needs, many AAAs have evolved and broadened their service portfolios to actively participate in the expansion of value-based care strategies that address the social determinants of health through programmatic and data-sharing partnerships between health care organizations and social services agencies.

Efficient information sharing across the spectrum of care provision—from traditionally “covered entities” under HIPAA to community-based service providers—is essential to fostering an effective transition to a value-based and integrated health care system. According to n4a members who are involved in expanding integrated care opportunities, HIPAA compliance efforts create significant, and sometimes prohibitive, difficulties and costs when building cross-sector partnerships.

The Office for Civil Rights should consider adjustments to current HIPAA rules and practices to ensure that both covered entities and community-based support programs are able to efficiently execute essential activities to improve care integration efforts.

Opportunities Within the OCR RFI to Improve Transformation to Value-Based Care

Direct n4a member input has informed our response to several of the inquiries included in the recent OCR RFI. Specifically, n4a believes that reassessing HIPAA's Privacy Rule (question 17) would reduce current information-sharing barriers between health care providers and social services agencies. Area Agencies on Aging have shared that navigating HIPAA requirements—either real or perceived—to implement compliant practices and foster health care partnerships with covered entities has been a significant challenge. *We agree that expanding the exceptions to the Privacy Rule's minimum necessary standard to include population-based case management and care coordination activities would improve care integration and quality.*

Furthermore, *we encourage OCR to clarify the scope of Protected Health Information (PHI) that covered entities may disclose to social service agencies and community-based support programs* (question 18). n4a members have identified common but substantial barriers to information sharing resulting from differing and inconsistent interpretations of the current law. To encourage successful cross-sector connections and partnerships, OCR should address integrated care obstacles that are due to covered entities' organizational policies that restrict common-sense information sharing practices with social service agencies and community-based support programs.

We also believe that *OCR should expressly permit disclosures of PHI to multi-disciplinary/multi-agency teams tasked with ensuring that individuals in need can access the full spectrum of available health and social services* (question 19). According to Area Agencies on Aging working to improve integrated and value-based care opportunities, expressly permitting information sharing and disclosure of PHI to multi-disciplinary/multi-agency teams would enhance procedures to appropriately target and refer patients to vital community-based social services. This would allow these social service agencies to provide improved person-and-family-centered care options.

n4a is optimistic that increased public outreach and education on existing provisions of the HIPAA Privacy Rule that permit uses and disclosures of PHI for care coordination and case management would be beneficial (question 20). According to n4a members, there are a lack of accessible public resources to help social services agencies build HIPAA compliance and contracting acumen. The educational resources that do exist are difficult to interpret and navigate. OCR should

focus on developing user-friendly guides for health care organizations, as well as social service agencies, that clearly and succinctly outline the HIPAA privacy rules and provide real-world scenarios featuring information-sharing best practices. n4a members also indicated that a resource center or hotline would be a valuable education and outreach tool, particularly for social service agencies that are newly endeavoring to build effective cross-sector partnerships.

However, n4a does not believe that outreach and education activities alone would be sufficient to meet the goals outlined in the RFI without also implementing policy modifications to existing provisions of the HIPAA Privacy Rule. We recommend enhanced outreach and education efforts be implemented by OCR but doing so will not fully address barriers to implementing effective partnerships between health care providers and CBOs.

To realize the care improvement and cost savings potential of value-based and integrated care initiatives, n4a believes that OCR and other critical stakeholders must take a comprehensive, collaborative approach to addressing current barriers inherent in the HIPAA Privacy Rule while also ensuring that patient information is protected. We look forward to working with HHS OCR to ensure that these goals are met and that we enhance the critical role of AAAs and other CBOs in improving value-based and integrated care through connection to community-based services and supports.

Sincerely,

A handwritten signature in black ink that reads "Sandy Markwood". The signature is written in a cursive, flowing style with a long, sweeping tail on the "d".

Sandy Markwood
Chief Executive Officer