

April 13th, 2021

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

Re: RIN 0945-AA00 Proposed Modifications to the HIPAA Privacy Rule To Support, and Remove Barriers to, Coordinated Care and Individual Engagement

Dear Acting Director Frohboese:

The Academy of Nutrition and Dietetics (the “Academy”) appreciates the opportunity to submit comments to the notice of proposed rulemaking (NPRM) relating to the proposed modifications to the HIPAA Privacy Rule.

Representing more than 107,000 registered dietitian nutritionists (RDNs),¹ nutrition and dietetic technicians, registered (NDTRs), and advanced-degree nutritionists, the Academy is the largest association of nutrition and dietetic professionals in the United States. Our members provide various medical and professional services in the clinical and community settings, conduct significant research, and are committed to improving the health of all Americans through the transformative power of food and nutrition.

The Academy offers specific comments on the following items in the NPRM:

- Individuals Right of Access to Protected Health Information (PHI) (**Section A**)
- Reducing Identity Verification Burden for Individuals Exercising the Right of Access (**Section B**)
- Amending the Definition of Health Care Operations to Clarify the Scope of Care Coordination and Case Management (**Section C**)
- Creating an Exception to the Minimum Necessary Standard for Disclosures for Individual-Level Care Coordination and Case Management (**Section D**)
- Clarifying the Scope of Covered Entities' Abilities to Disclose PHI to Certain Third Parties for Individual-Level Care Coordination and Case Management That Constitutes Treatment or Health Care Operations (**Section E**)
- Eliminating Notice of Privacy Practices Requirements Related to Obtaining Written Acknowledgment of Receipt, Establishing an Individual Right To Discuss the NPP With a

¹ The Academy approved the optional use of the credential “registered dietitian nutritionist (RDN)” by “registered dietitians (RDs)” to more accurately convey who they are and what they do as the nation’s food and nutrition experts. The RD and RDN credentials have identical meanings and legal trademark definitions.

Designated Person, Modifying the NPP Content Requirements, and Adding an Optional Element (**Section G**)

*Individuals Right of Access to Protected Health Information (PHI) (**Section A**)*

The Academy supports the OCR's proposed modification to provide a faster response time for individuals to obtain Protected Health information (PHI) from covered entities. We believe that this will indeed improve coordination of care, especially if there are interoperability challenges between health care systems. For example, a patient who is newly diagnosed with diabetes is discharged from an inpatient hospital stay may live many miles from the hospital system, and as such the patient is referred to an RDN in another hospital system or private practice closer to their own residence. That RDN would have quicker access to critical patient records (lab results, plan of care, etc.) which allow for timely adjustments of meal plans to match medication management, prevent a rehospitalization, and/or lessen stress caused by wait time for the patient.

The Academy also supports the OCR's proposal to provide individuals with options to receive/obtain access to the PHI. We agree with allowing individuals to view their medical records and allowing them to copy to their own personal devices free of charge. While many individuals are already able to access after visit summaries and assessments through the EHR either through an electronic patient portal or app, they are not able to access the breadth of their medical record. **While we support expanding digital access to PHI, we would like OCR to consider the cost of labor for assembling records whether they are provided via digitally or on paper.** Often, requests for records are accompanied by requests to have records assembled and then sent via an encrypted file or as an e-fax. It can take significant time for staff to pull together records, particularly those for individuals with long term and/or extensive medical histories.

*Reducing Identity Verification Burden for Individuals Exercising the Right of Access (**Section B**)*

The Academy understands the intent behind needing to reduce the identification burden imposed on individuals who are attempting to obtain access to their own PHI, particularly when provisions are put into place that severely limit right of access. However, we do have concerns with loosening identification requirements too far as doing so may increase risk of sensitive PHI being released to unauthorized individuals. The Academy feels it is of the utmost importance that both an individual's right of access is protected while putting provisions in place to ensure that when an individual requests their records there is enough information provided that the provider or institution can reasonably assume the request is coming from the patient or authorized representative. The Academy agrees with past comments that the terms "necessary", "unreasonable", and "extensive" fundamentally are subjective in nature and therefore are interpreted by each individual entity. For example, one entity may think it necessary and reasonable for an individual to sign in person a written request for records, while another may deem that very same process as extensive and require only a government issued ID. **The Academy believes there must be clear and concise guidance put forth by OCR stating what verification requirements at a minimum are appropriate when records are requested.**

Amending the Definition of Health Care Operations to Clarify the Scope of Care Coordination and Case Management (Section C) and Clarifying the Scope of Covered Entities' Abilities to Disclose PHI to Certain Third Parties for Individual-Level Care Coordination and Case Management That Constitutes Treatment or Health Care Operations (Section E)

The Academy supports the proposed update to the “health care operations” definition to include care coordination and case management activities at both the population based and individual levels. An individual’s social and economic circumstances often affect that individual’s ability to comply with nutrition recommendations; this can range from accessibility to appropriate foods, the ability to store and prepare nutritious meals, or attend follow-up appointments. The Academy believes that improving access and coordination of care to community and social services will support better overall health care for individuals.

Academy members have voiced concern with the potential for PHI being released too broadly within community and social service settings. Questions that have been raised include:

1. What is the minimum necessary amount of information that should be shared?
2. What personnel in the community or service organization would have access to the information? For example, does a meal delivery person need to have access?
3. Has an individual’s PHI been shared with other family members who otherwise would not have access to the information?

Given these concerns the Academy encourages OCR to consider what safety measures (guardrails) can be put into place to ensure that PHI shared within a community or social service setting is appropriate and protected.

Creating an Exception to the Minimum Necessary Standard for Disclosures for Individual-Level Care Coordination and Case Management (Section D)

The Academy supports OCR’s proposal to lift the requirements that covered entities must make the determination about the minimum information necessary when they receive a request from another covered health care provider or health plan. We agree that lifting the burden off providers to determine what another entity may need to provide or facilitate care is in the best interest of the individual patient.

Eliminating Notice of Privacy Practices Requirements Related to Obtaining Written Acknowledgment of Receipt, Establishing an Individual Right To Discuss the NPP With a Designated Person, Modifying the NPP Content Requirements, and Adding an Optional Element (Section G)

The Academy appreciates OCR’s efforts to lessen extensive paperwork, especially when such paperwork is perceived as a burden, unnecessary, and creating confusion for both the individual and office personnel. **The Academy also supports the proposed content modifications to the NPP** which include information on how individual medical information may be used and disclosed; individual rights with respect to their own medical information and how they may

exercise their rights to obtain copies of records; and lastly, how to file a HIPAA complaint and who to contact within the covered entity.

The Academy supports providing individuals with the opportunity to discuss the NPP with a contact person designated the covered entity, however we believe this should be “in addition to” the signed acknowledgement versus “in lieu of”. At a minimum, the Academy believes a written acknowledged receipt (either digitally or on paper) of the NPP is necessary to both protect the provider (institutions) from potential allegations of fraud as well as provide individuals with a record on how to obtain their medical information as well as any potential costs that may be incurred. Our members have indicated situations where they have received complaints, and in some cases accusations of fraud, relating to charges/fees for records; and since they had kept a signed NPP on file they were able to quickly resolve issues.

Thank you for your consideration of the Academy’s recommendations on the proposed modifications to the HIPAA Privacy Rule. Please do not hesitate to contact Marsha Schofield at 312-899-1762 or by email at mschofield@eatright.org with any questions or requests for additional information.

Sincerely,

Marsha Schofield, MS, RD, LD

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