



## **HIPAA Notice of Proposed Rulemaking**

On December 10th, 2020, HHS released a Notice of Proposed Rulemaking (NPRM) that will reshape the HIPAA Privacy Rule. This new NPRM has wide reaching implications that directly affect Release of Information processes, privacy policies, organization costs and patients' privacy. Over the coming weeks, AHIOS and its members will be providing more detailed documentation on how this legislation impacts the various stakeholders. In the meantime, we have put together a brief overview of the legislation below.

### **What is the NPRM and Why Is it Important?**

A NPRM is a formal way for an agency to introduce, add to, or change a rule or regulation. This NPRM seeks to expand and strengthen patient access rights under the HIPAA Privacy Rule while reducing some of the administrative burdens surrounding patient privacy, notice of privacy practices and limiting requests of PHI to the minimum necessary.

The full document can be downloaded at: <https://www.hhs.gov/sites/default/files/hhs-ocr-hipaa-nprm.pdf>

### **Impact on the Release of Information Industry**

- This proposed rule will negatively affect the Release of Information industry and how it provides services to Covered Entities, most likely resulting in cost shifting from third party commercial entities to healthcare providers.
- There are several aspects where patient privacy safeguards are being removed in the name of improved patient access or administrative simplification.
- HHS seems to be expanding the scope of Information Blocking to not just be limited to patients and continuity of care, but potentially ANY actor that wishes to gain API access.
- HHS wants to reintroduce the third party directive (aka PDR/HITECH Request) by formally mandating that healthcare providers must comply and not charge more than a cost-based fee for records going to a third party (HHS's estimated average cost to produce PHI in an EHR is \$1.49).
- HHS cost justifications for this action are based on unrealistic metrics (e.g. 5 minutes to process a request for records, 50% of record requests needing PHI not in an EHR, etc.)
- The current wording may open the floodgates for health plans to have unfettered access to records for HEDIS and other activities that can be lumped under Care Coordination. In working with many of our Covered Entity clients' compliance with Information Blocking, we understand that many have concerns with segregation of data and granular control, so this will compromise patient privacy.



Most of our clients are currently working towards compliance with the 21st Century Cures Act (Information Blocking) which many believe to be a strong step forward in promoting patient access and self-service. This proposed modification to HIPAA undermines those efforts by attacking the function in HIM that serves as the bridge between self-service and the vast majority of record requests i.e., release of information.

If this rule is finalized in its current form, it will shift a significant portion of costs incurred by third party commercial entities directly onto the healthcare system.

#### **How can you help?**

- Read the NPRM and let us know your concerns or submit your questions to us at [www.ahios.org/nprm-feedback](http://www.ahios.org/nprm-feedback). This feedback will be used to craft our webinar in January and our more detailed follow up explanation of the NPRM
- Register for our webinar in January (details will be distributed by your current ROI vendor)
- Involve your legal and privacy department in the commentary process
- Submit your comments to HHS! We will submit our concerns, but HHS needs to hear from the healthcare community on how this will impact you

#### **About the Association of Health Information Outsourcing Services**

Established in 1996, AHIOS promotes, strengthens and enhances the health information management outsourcing industry while ensuring excellence in managing risk and compliance issues associated with the disclosure of Protected Health Information. Its goals are to increase awareness of the value, importance and complexity of the industry's services; establish standards of excellence for the industry of health information management outsourcing; pursue fair and equitable treatment of the industry through legislative, regulatory and legal processes; and create educational and networking opportunities for members. For more information, visit [AHIOS.org](http://AHIOS.org)