



advocacy | action | answers on aging

May 6, 2021

**National Association of
Area Agencies on Aging**

1100 New Jersey Avenue, SE
Suite 350
Washington, DC 20003

P 202.872.0888
F 202.872.0057

n4a.org

Robinsue Frohboese, PhD, JD
U.S. Department of Health and Human Services
Office of Civil Rights
Hubert H. Humphrey Building
Room 509F
200 Independence Avenue, SW
Washington, DC 20201

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

**Re: Notice of Public Rulemaking (NPRM) on Modifying
HIPAA Rules to Improve Coordinated Care, RIN 0945-
AA00**

Dear Dr. Frohboese:

The National Association of Area Agencies on Aging (n4a) appreciates the opportunity to provide comments on behalf of n4a's membership on how changes to the Health Insurance Portability and Accountability Act (HIPAA) Rules could better promote coordinated and value-based health care, particularly as it relates to the ability of covered entities to disclose protected health information (PHI) to social service and other third-party agencies that provide health-related services.

We also appreciate the Health and Human Services (HHS) Office for Civil Rights (OCR) commitment to ensuring that rules regulating important patient privacy protections within HIPAA do not inadvertently stymie or impede the ongoing transformation to value-based health care or discourage essential coordinated care activities 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 an advocacy voice for the more than 260 Title VI Native American aging programs, we overall support many of the changes proposed in the NPRM intended to promote 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 nearly 50-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, information and referral/assistance, case management and elder rights activities. AAAs also 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 community is known as the National Aging Network, and the resulting system has been functioning efficiently and effectively for decades. Historically, AAAs have provided these services through federal Older Americans Act (OAA) programs and state Medicaid HCBS waivers. However, in recent years, AAAs have been key partners in the transformation toward building a value-based, integrated health care system in both Medicaid and Medicare. Because AAAs are experts at providing community-based social services and supports that address health-related social needs, AAAs are increasingly working with health care partners on innovative care 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, which 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 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 contractual relationships that require data sharing 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 services providers—is essential to fostering an effective transition to a value-based and integrated health care system. According to n4a AAA members that are involved in expanding integrated care opportunities, HIPAA compliance efforts have been a significantly, and sometimes prohibitively, difficult and costly challenge to building cross-sector partnerships.

The NPRM Represents an Important Step Toward Promoting Value-Based Care and Improving Care Coordination

Overall, n4a believes that the proposed changes to existing HIPAA privacy rules as outlined in the HHS OCR NPRM released this year pertaining to care coordination and case management activities, disclosure flexibilities during emergency circumstances, and individual access to health information represent an important evolution in integrated care activities. While n4a members expressed some concerns—which are detailed in the below comments, overwhelmingly the Association’s membership supports many of the changes. n4a agrees that these changes would enable community-based entities to collaborate more efficiently and effectively with acute health care providers and other HIPAA-covered entities improve care coordination efforts between the social services and health care sectors.

While we understand that the NPRM offers multiple strategies for promoting value-based and integrated care through reforming the HIPAA privacy rules, there are several proposed changes that would significantly affect how AAAs and other Aging Network stakeholders and community-based organizations (CBOs) share data and coordinate with covered entities under HIPAA.

Expressly Permit Covered Entities to Disclose Information to Social Service Organizations

n4a supports changes that would expressly permit HIPAA-covered entities to disclose protected health information (PHI) to social services agencies, community-based organizations, home and community-based services (HCBS) providers, or other entities that provide/coordinate health-related services and case management. We believe that expressly allowing multi-disciplinary/multi-agency teams tasked with ensuring that individuals can access the full spectrum of available and necessary health and social services would sufficiently improve coordinated care activities. We appreciate that the NPRM does not change the underlying authority that covered entities have to disclose this information, but instead clarifies that PHI can be communicated to third parties engaged in care coordination, case management and other health-related activities.

n4a members and their CBO partners and providers have a history of navigating the perceived prohibition on sharing PHI between covered entities and social services organizations. While some AAAs and CBOs have successfully established information sharing arrangements, the majority of n4a members who responded to our request for feedback regarding potential outcomes of this clarification in the NPRM noted that providing express permission would ease burdens and address existing obstacles to information sharing between covered and non-covered entities. We appreciate that the NPRM acknowledges previous input from n4a and other stakeholders that perceived prohibitions to information sharing between health care and non-health care providers often lead to common, but substantial, barriers to cross-sector coordination and partnerships that promote value-based, integrated care and takes steps to address those barriers.

Several n4a members shared a cautionary note that the express permission of this information sharing could have the unintended consequence of enabling covered entities to potentially “dump” information on community-based organizations in the way of referrals and PHI, leading to a cumbersome and onerous quantity of data that is shared. While we recognize that this scenario could be a potential drawback, we believe that the clarification that information is shared only at an individual rather than population level will prevent this unintended consequence from occurring on a large scale.

Changes to the Minimum Necessary Standard for Care Coordination and Case Management

n4a also supports changes proposed in the NPRM to address barriers to care coordination and case management that have increased with the adoption of managed care initiatives, including Medicaid managed care. Specifically, we appreciate that the proposed changes would ensure expressly categorized care coordination and case management activities as “treatment” disclosures among covered entities, which would exempt these disclosures from HIPAA’s “minimum necessary standard,” which mandates that disclosures of PHI be limited to the minimum necessary to accomplish the particular use, disclosure or request.

Overall, n4a members who responded to our request for feedback concurred that the proposed change would mean that relaxing this disclosure standard on an individual level for case management and care coordination activities between covered entities would improve and enhance coordination between health care providers and health care plans/payers that have care coordinators on staff to link individuals to other health care and health-related services. Particularly pertaining to managed care activities in which that Aging Network entities participate, this change will ease information sharing barriers between health plans and providers to enhance care coordination and case management activities.

Other Proposed Changes to the HIPAA Privacy Rules

n4a also solicited feedback from Association members regarding implications—intended or unintended—that other changes to the HIPAA privacy rules outlined in the NPRM would have. On the whole, n4a members were supportive of modifying the standard of disclosure to expand the ability of covered entities to disclose PHI to family members and other caregivers when they believe it is in the best interest of the individual to do so.

However, some members cautioned that the lessening of the standard of disclosure to family members and other caregivers could potentially have the unintended consequence of exacerbating family disputes over who should receive information disclosures, and that covered entities should proceed with caution in implementing any changes.

n4a members were also supportive of expanding the ability of covered entities to disclose PHI to avert a threat to health or safety if harm is “serious and reasonably foreseeable.” As such, n4a supports removing the requirement that a covered entity must judge that a threat is “imminent” before disclosing PHI if it is in the best interest of an individual experiencing a health emergency or crisis situation. We believe that this change would improve care coordination and response in such instances.

Furthermore, n4a members were generally supportive of the changes that would remove barriers for individuals to access their own PHI and to respond to changes in technology. Therefore, n4a raises no objection to the provisions in the NPRM that would reduce the time that covered entities have to respond to PHI requests; allow individuals to electronically access and share their PHI; allow individuals to take notes or capture images of their PHI; and reduce the identity verification burden on individuals requesting their PHI.

Overall, n4a believes that, as health systems seek to transform service delivery models, the changes to HIPAA privacy rules outlined in the NPRM will enable significant progress in addressing the numerous accounts of HIPAA regulations preventing or impeding efficient integration and care coordination efforts among health care providers and social services agencies and providers.

We appreciate the responsiveness of policymakers at HHS OCR to thoughtfully consider stakeholder feedback and propose relevant and important regulatory updates that we hope will improve care coordination and integration efforts with the health care sector.

Should you have any additional questions or require feedback from n4a, please don't hesitate to contact me or my policy team at policy@n4a.org or 202.872.0888.

Sincerely,

A handwritten signature in cursive script that reads "Sandy Markwood". The signature is written in black ink and is positioned below the word "Sincerely,".

Sandy Markwood
Chief Executive Officer