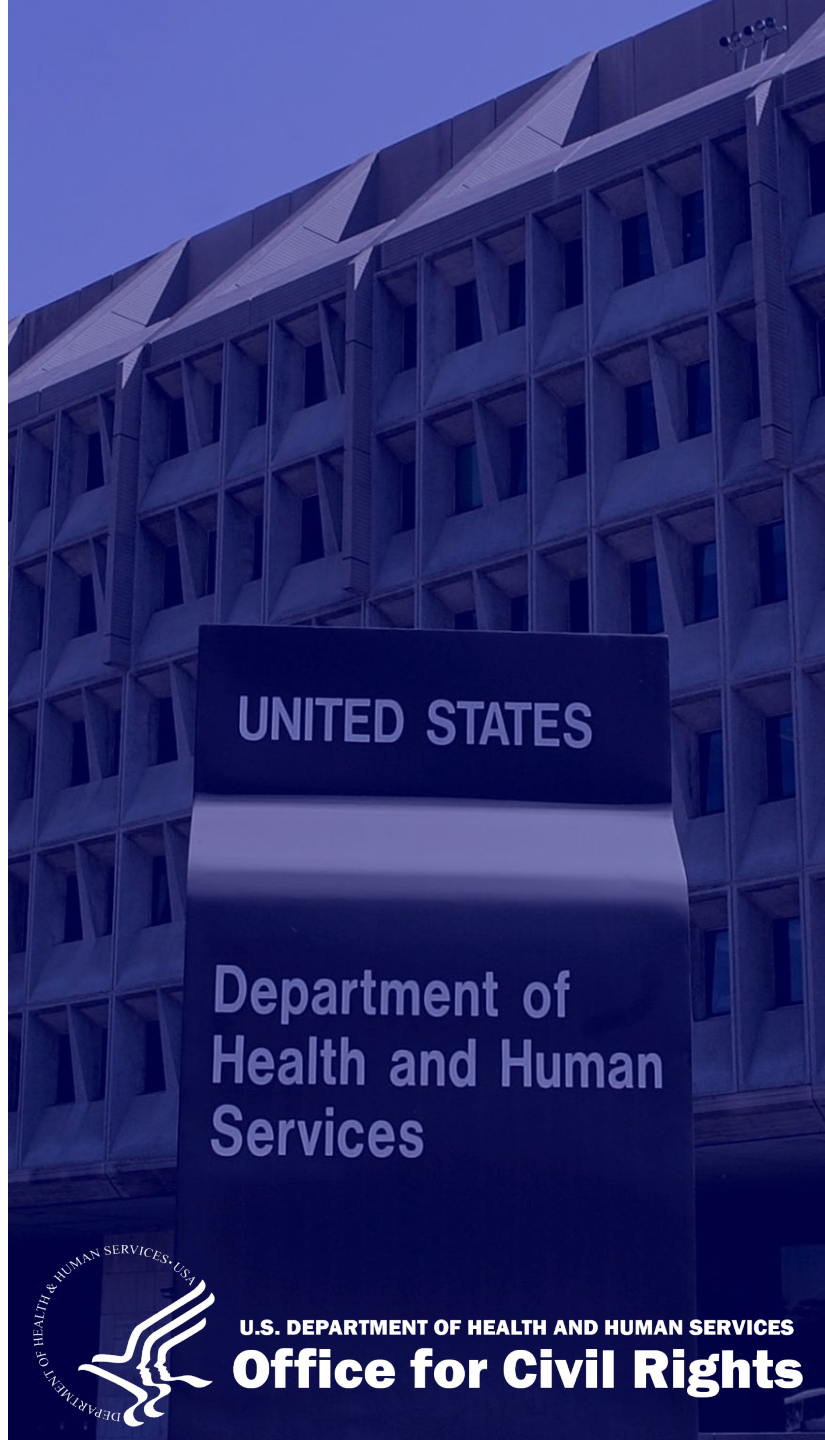
HIPAA Privacy Rule:

Proposals to Support, and Remove Barriers to, Coordinated Care and Individual Engagement



NPRM Overview

- ❑ Right of Access
- ❑ Care Coordination and Case Management
- ❑ Disclosures to Address Emergencies
- ❑ Notice of Privacy Practices (NPP)
- ❑ Telecommunications Relay Services
- ❑ Uniformed Services

Right of Access

Time to Act on Requests for Access

- Would require covered entities to provide individuals with access to their PHI “as soon as practicable” but no later than 15 calendar days after receipt of request
  - One possible extension of 15 calendar days
  - Policy to prioritize urgent or otherwise high priority requests (esp. those relating to the health and safety of individual or another person)
  - Shorter timelines in other law are “practicable”

Right to Inspect

- Would strengthen the right to inspect:
  - Right to view, take notes and photographs, and use other personal resources to capture their PHI in a designated record set at a mutually convenient time and place, including in conjunction with a health care appointment
- Permitted limits:
  - Not required to allow connection of personal devices to CE's information systems
  - May impose measures to ensure individual only records PHI to which individual has right of access
  - May establish reasonable policies and safeguards to minimize disruption to operations

Form and Format

- Would deem PHI “readily producible” in an electronic form and format where another federal or state law requires that form and format
  - If a covered entity or its EHR developer (business associate) has implemented a secure, standards-based API that is capable of providing access to ePHI in the form and format used by an individual’s personal health application, that ePHI is considered to be *readily producible* in that form and format

Time and Manner

- Would require a covered entity to provide access as requested by the individual in a timely manner
  - Includes proposed requirement to, at the individual's request, mail or electronically transmit the copy of PHI to the individual, including:
    - By e-mail
    - To or through the individual's personal health application (if readily producible)

Right to Direct ePHI to a Designated Person

- Would add right to direct a **covered entity** to transmit an **electronic copy** of PHI **in an EHR** to a person designated by the individual
- "Clear, conspicuous, and specific" request
  - Orally or in writing (which may be electronically executed)
  - Individual may use an internet-based method to submit the access request, so long as it is "clear, conspicuous, and specific"

Access Fees

- Would codify expectations expressed in guidance about fees for in-person inspection and access through an internet-based method, such as a patient portal
- Would prohibit fees for costs of electronic media and postage for mailing electronic media

Notice of Access & Authorization Copy Fees

- Would require notice of fees for copies of PHI requested under the access right and with an individual's valid authorization
  - Website posting and available at point of service upon request
  - Include types of access available and fee schedule
- Would require, upon the individual's request:
  - Individualized estimate of approximate fees to be charged for copies
  - Itemized list of charges for a specific request for copies

Uses and Disclosures for Care Coordination & Case Management

Health Plan Clarification

The term health care operations encompasses all care coordination and case management by health plans, whether population-based or focused on particular individuals

The minor edit to the definition clarifies that:

Health plans may use and disclose PHI for population-based and individual-focused care coordination and case management under the permission to use and disclose PHI for health care operations

Exception to Minimum Necessary Standard

- Exception to the minimum necessary standard for disclosures to, or requests by, a health plan or covered health care provider for care coordination and case management for individuals
  - Would not apply to population-based care coordination and case management
  - Covered entities would still be able to honor individuals' requests for privacy restrictions

Care Coordination Disclosures to Third Parties

- Express permission for covered entities to disclose PHI to third parties for individual-level care coordination and case management
  - Social services agencies
  - Community-based organizations
  - Home and community based services (HCBS) providers
  - Similar third parties that provide or coordinate health-related services

Increasing Entities' Abilities to Use and Disclose PHI for Emergencies and Health Crises

From Professional Judgment to Good Faith

- Current professional judgment standard presupposes that a decision is made by a health care professional, such as a licensed practitioner
- Proposed good faith standard may be exercised by other workforce members who are trained on the covered entity's HIPAA policies and procedures and who are acting within the scope of their authority
- Presumption of good faith

Preventing Serious Harm

- Uses and disclosures for health or safety when harm is “serious and reasonably foreseeable,” instead of the current “serious and imminent” threat standard
  - Reasonably foreseeable based on a reasonable person standard
  - Heightened deference to covered health care providers with specialized training or expertise
  - Still based on good faith belief of the covered entity, with presumption of good faith

Notice of Privacy Practices

Notice of Privacy Practices (NPP)

- Would eliminate written acknowledgment requirements for the NPP
- Would establish an individual right to discuss the NPP with a person designated by the covered entity
- Would explain how to contact the designated person

Notice of Privacy Practices (NPP)

- Proposed NPP content changes to better inform individuals of their rights with respect to their PHI and how to exercise those rights
  - How to access their health information
  - How to file a HIPAA complaint
  - Right to receive a copy of the notice and to discuss its contents with a designated person

Additional Proposals Addressing Stakeholder Needs

Telecommunications Relay Service (TRS)

- Would expressly permit disclosures to TRS communications assistants for persons who are deaf, hard of hearing, or deaf-blind, or who have a speech disability

- Would exclude TRS providers from the definition of *business associate*

- Would ensure that workforce members of a regulated entity can use TRS to share PHI with other workforce members or outside parties as needed to perform their duties

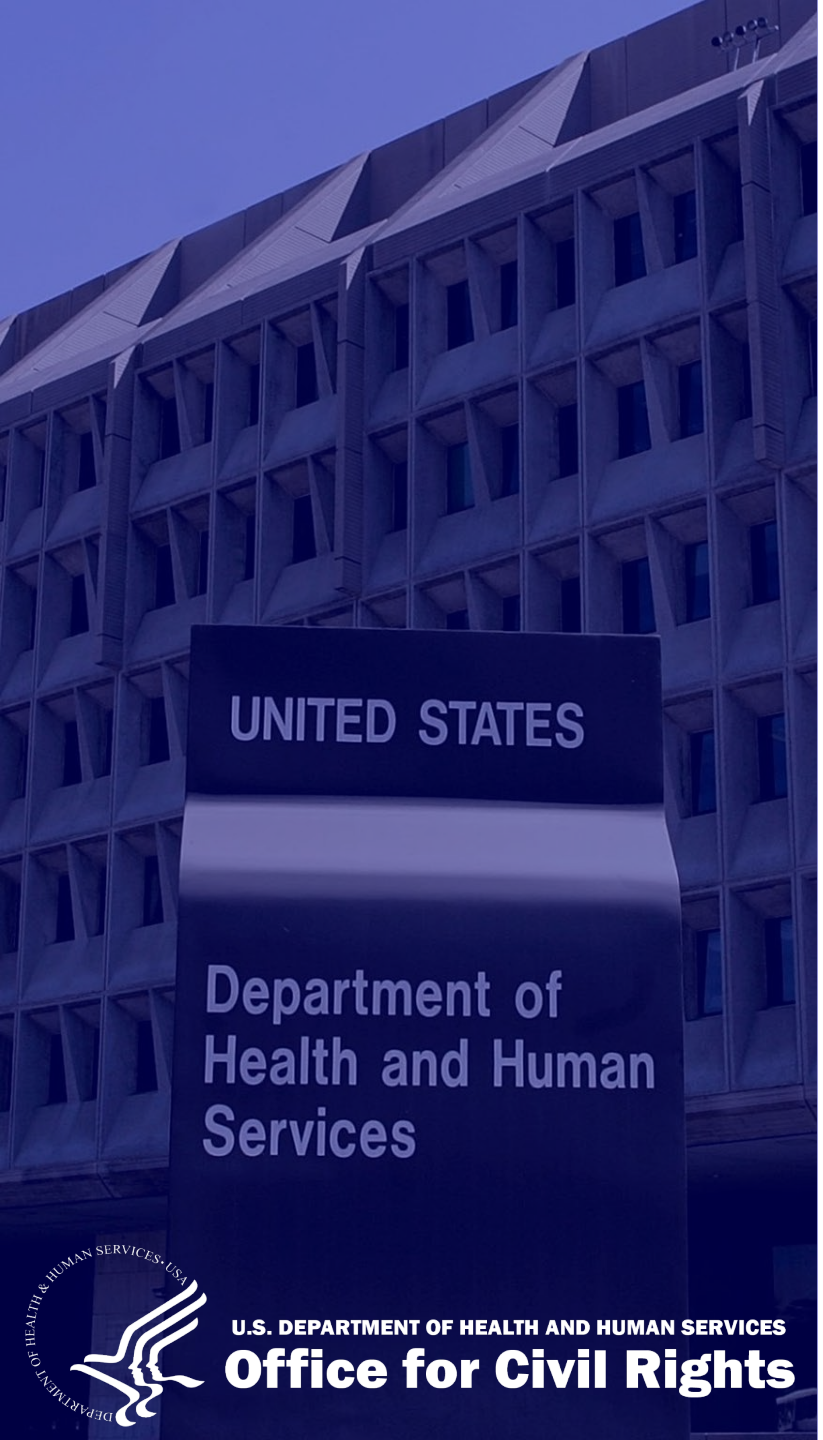
Uniformed Services Personnel

- Would extend permission to disclose PHI of Armed Forces personnel to include all uniformed services, adding:
  - U.S. Public Health Service (USPHS) Commissioned Corps
  - National Oceanic and Atmospheric Administration (NOAA) Commissioned Corps.

- Would allow disclosures necessary to assure proper execution of the mission

Resources

- NPRM:
  - https://www.govinfo.gov/content/pkg/FR-2021-01-21/pdf/2020-27157.pdf
- Fact Sheet:
  - https://www.hhs.gov/sites/default/files/hipaa-nprm-factsheet.pdf
- Comments:
  - https://www.regulations.gov/document/HHS-OCR-2021-0006-0001



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