



September 13, 2010

The Honorable Kathleen Sebelius, Secretary
U.S. Department of Health and Human Services (HHS)
Office for Civil Rights
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Attention: HITECH Privacy and Security Rule Modifications

Dear Secretary Sebelius,

The National Association of Dental Plans (NADP) is responding to questions posted by HHS in the July 14, 2010 Federal Register, "Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act (HITECH), RIN 0991-AB57."

NADP is the largest non-profit trade association focused exclusively on the dental benefits industry, i.e. dental HMOs, dental PPOs, discount dental plans and dental indemnity products. NADP's members provide dental benefits to over 82% of the 176 million Americans with dental benefits. Our members include major commercial carriers, regional and single state companies, as well as companies organized as non-profit plans.

I. Section 164.520 – Notice of Privacy Practices for Protected Health Information

Section 164.520 requires covered entities to advise their enrollees of strengthened privacy protections under HITECH. As these modifications are a substantial material change, plans are required to revise and redistribute the Notice of Privacy Practice (NPP) within the required 60 days. HHS recognizes the increased cost for insurers and proposes various scenarios for feedback to address the cost factor. NADP appreciates this request, as administrative costs for dental plans are extremely financially burdensome due to the low premium price of dental benefits.

The costs estimated for time, printing and postage are severely underestimated. The legal review time is unrealistic, and the estimate does not include time and cost to update a plan's website, enrollment packets, policies, etc. In addition, there are other costs associated with redistributing the NPP, including necessity of specialized mailings (e.g., California requires the Language Assistance Program notice be included in mailings to members), increased call volume to customer service from members about the notice, and other similar concerns.

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From the choices outlined by HHS, **NADP recommends option one** which replaces the 60-day notice requirement with a condition that plans revise their NPPs and redistribute them (or at least notify members of the material change to the NPP and how to obtain the revised NPP) in their next annual mailing to members, such as the beginning of the plan year or during the open enrollment period. Allowing plans increased flexibility on notifications will significantly defray additional costs, while keeping consumers informed and protected. Other choices proposed by HHS only delay and increase administrative costs incurred by dental plans.

All areas of the market, including covered entities and purchasers of insurance, are impacted by the costs of complying with added regulation. Allowing dental plans opportunities to comply in a less costly manner will be of benefit to employers, consumers, and plans alike, in keeping with regulatory differentiation between medical and dental benefits in many provisions of federal law, and in recognition that Privacy enhancements would earlier have been communicated by medical plans.

K. Section 164.524 – Access of Individuals to Protected Health Information

HIPAA established a right of individuals to review or obtain copies of their Protected Health Information (PHI), maintained in a designated record set. This right exists regardless of the format of the PHI. Per the Privacy Rule, a request for access must be approved or denied, and if approved, access or a copy of the information must be provided within 30 days of the request. When the information is maintained at an off-site location, the covered entity has an additional 30 days to respond to the request. As part of this proposed rule, HHS is requesting comment on whether the provision allowing a covered entity an additional 30 days for records located off-site should be eliminated for both paper and electronic records or at least for PHI maintained or archived electronically because physical location of electronic data storage is not relevant to its accessibility.

NADP recommends the current timetable for response continue or at least allow 60 days for off-site recovery. While it typically does not take our plans very long to retrieve data, there are instances in which additional time is necessary. Physical location of electronic data storage is relevant to its accessibility. Electronic media includes electronic storage material such as magnetic tape or disk, optical disk or digital memory cards. As individuals have the right of access to PHI contained in a designated record set for as long as the plan maintains the information, including PHI that was created or received before the compliance date (April 14, 2003), the records may be archived to backup tape or disk and stored at off-site locations. There are no methods to retrieve this data other than physical retrieval of the backup tapes from the storage site. The timing requirements in the HIPAA Privacy Rule for off-site records, whether paper or electronic, should remain as is (i.e., the additional 30 day allowance).

NADP greatly appreciates the opportunity to share our views and available to answer any of your questions. Please feel free to contact me directly at 972.458.6998x111 or khathaway@nadp.org.

Sincerely,



Kris Hathaway
Director of Government Relations

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