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April 19, 2002

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: Privacy 2
Hubert H. Humphrey Building, Room 425A
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Sir or Madam:

Comment Scope and Commenting Parties

Thank you for the opportunity to comment on the proposal of the Department of Health and Human Services to modify certain standards in HIPAA's Privacy Rule. These comments reflect the views of The Center for Information Policy Leadership at Hunton & Williams and Privacy Council. We have limited these comments to our recommendation that you encourage covered entities to provide short informing privacy notices along with the longer privacy notices required by the Privacy Rule. The Center for Information Policy Leadership is a policy center that operates within the law firm of Hunton & Williams. Privacy Council is a company that provides privacy and security solutions to business.

Background

HIPAA's Privacy Rule requires that covered health care organizations that use or disclose protected health information ("PHI") give individuals notice of the possible uses and disclosures of the PHI, and of the individuals' rights and the organizations' legal duties with respect to the information. The Rule requires those notices to include at least nineteen distinct elements. Research on risk notices shows that individuals have difficulty processing notices that contain more than seven elements. Research also indicates that individuals cannot easily comprehend notices that require the recipient to translate the vocabulary used in the notices into concepts they can understand. Accordingly, individuals get frustrated when confronted with notices that force them to work too hard to understand the content. Individuals often believe that notices are intentionally complex, leaving them with the sense that the organization providing the notice has something to hide.



U.S. Department of Health and Human Services
April 19, 2002
Page 2

One solution to this dilemma is “layered” notices. A layered notice is comprised of (i) a short notice that helps individuals understand the uses of information and the choices they have with respect to that information, and (ii) a longer notice, layered beneath the short notice, that contains all the elements required by law. The short notice uses a simple vocabulary and is formatted in a common template that can be easily compared from one organization to the next. This type of repetitive format eases an individual’s understanding of the notice and bolsters her trust in the organization.

The concept of “short layered notices” builds on the templates and vocabulary The Center for Information Policy Leadership developed in the Standard Short Notices Project. In that Project, the Center, along with representatives from a number of industry leaders, developed a short privacy notice template in response to the public’s negative reaction last July to the privacy notices disseminated by the financial services industry pursuant to the Gramm-Leach-Bliley Act. The Center has vetted the template with consumer focus groups, consumer and privacy advocates, and government regulators. We have received widespread support for this effort. Most importantly, the participants in the consumer focus groups were crystal clear in their desire for short notices that are consistently formatted. They also were adamant in their wish to avoid notices that replicate the complexity of the financial privacy notices they received last spring. The financial notices were, in fact, less complex than HIPAA notices are likely to be -- the financial notices had nine required elements compared with a minimum of 19 required by the HIPAA Privacy Rule.

Encouraging the use of a short, template-based short notice would not require the Secretary to reopen the regulations. As stated above, this is a layered approach. The template-based short notice would be provided along with the longer notice needed for regulatory compliance. As research has shown, most patients would like the ability to easily understand (i) how an institution manages personal information, and (ii) how individuals can exercise choice. Those few patients who would prefer the longer compliance notice would be provided with that notice as well.

Action Requested

The Center for Information Policy Leadership and Privacy Council urge the Secretary to encourage in the final Privacy Rule market-testing and use of a template-based short notice as part of a layered privacy notice. If, over time, patients are receptive to receiving the shorter notice (with the longer notice available upon request), the Secretary might reopen the regulations to permit that outcome. We believe that market tests of a short privacy notice would be productive for consumers and covered entities alike. We also suggest that the Secretary encourage some of the covered entities operating directly under his authority to test



U.S. Department of Health and Human Services
April 19, 2002
Page 3

the short notice concept within their own organizations. This would help ensure a thorough evaluation of the layering approach to notices.

For more information on these comments, please contact:

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Thank you for this opportunity to comment on the proposed modifications to the Privacy Rule.

Sincerely,

Martin E. Abrams
Executive Director
The Center for Information Policy Leadership at Hunton & Williams