

Health Information Compliance Alert

HIPAA: HHS Secretary Suggests Some HIPAA Policies Need Updating

Hint: Coordination and value are at the root of the recommended changes.

HIPAA compliance can be a hassle, but it also safeguards patients' privacy. However, some industry players feel that old rules get in the way of coordinating care between specialists and offering quality, affordable treatment - and, those advocates may end up winning on this issue.

Context: In a speech to the Heritage Foundation last month, HHS Secretary **Alex Azar** mentioned possible changes to HIPAA privacy that the agency considers an impediment to providers. Some rules get in the way of patients' outcomes, and physicians must be able to follow through with other specialists and service providers to ensure positive end results, suggested Azar, who mentioned that rollbacks are already in the works.

"CMS kicked off this effort by releasing a request for information regarding the Stark Law, which prevents physicians from making referrals to other doctors or practices with which they have a financial relationship, unless certain enumerated exemptions apply," noted Azar.

He added, "In the coming months, under the leadership of my deputy secretary, Eric Hargan, HHS will be releasing requests for information regarding the Anti-Kickback Statute, HIPAA, and a federal privacy law called 42 CFR Part 2."

Read Secretary Azar's remarks at

www.hhs.gov/about/leadership/secretary/speeches/2018-speeches/remarks-to-the-heritage-foundation.html.

Privacy Reworking Suggest Opioid Connection

Late last year, HHS Office for Civil Rights (OCR) clarified HIPAA language to address concerns related to treating substance abuse patients. The December 2017 update didn't really make a huge difference, but supported physicians' needs to discuss treatment options with family members when patients were in "crisis or incapacitated," suggested the OCR release on the subject (See Health Information Compliance Alert, Vol. 17, No. 12).

Reminder: In his remarks, Azar referred to "42 CFR Part 2." This is short for "Title 42 of the Code of Federal Regulation (CFR) Part 2: Confidentiality of Substance Use Disorder Patient Records," which is a stricter privacy law than HIPAA and impacts specifically patients' privacy when they seek help for substance abuse from a federally-funded organization, advises the Substance Abuse and Mental Health Service Administration (SAMHSA) website. In March 2017, the government "modernized" the language and regulation in a final rule that included "new healthcare models" to "reduce unnecessary burden," SAMHSA said.

And this past June, "the House passed bipartisan legislation (by a vote of 357 to 57) that would, among other changes, allow disclosure of [substance use disorder] SUD treatment records without a patient's written consent to covered entities for purposes of treatment, payment, and healthcare operations in accordance with HIPAA privacy regulations," highlighted law firm **Sidley Austin LLP**. in online insight on the Azar's speech. "While similar, albeit narrower, legislation has been introduced in the Senate, it is unclear whether such changes will be included in final legislation."

Next steps: The feds have not issued a Request for Information (RFI) yet, but look for more information as the story unfolds in the coming months.

Resource: For more information on SAMHSA and 42 CFR Part 2, visit

www.samhsa.gov/about-us/who-we-are/laws-regulations/confidentiality-regulations-faqs.

