



## **Transforming Healthcare Through Innovation and Collaboration: Confidentiality and Security**

**Confidentiality Coalition Position:** *HLC leads a broad group of organizations, collectively known as the Confidentiality Coalition, to ensure that policymakers strike the right balance between the protection of confidential health information and the information-sharing needed to provide high quality of care. The coalition is active with Congress and the administration on policies related to data exchange, privacy, data security, and cybersecurity. Members believe that regulatory clarity is key to enabling health information flow and support efforts to create a uniform national privacy standard that does not conflict with the HIPAA privacy rule, rather than the inconsistent and differing state laws that currently supersede federal regulation.*

**State of Play:** *As part of the U.S. Department of Health and Human Services' (HHS) Regulatory Sprint to Coordinated Care, the administration released three new proposed rules. The Substance Abuse and Mental Health Services Administration (SAMHSA) issued a proposed rule to update and clarify regulations related to the confidentiality of substance use disorder patient records. The HHS Office of the Inspector General and the Centers for Medicare and Medicaid Services (CMS) issued proposed rules on the Anti-Kickback Statute (AKS) and the physician self-referral (Stark) law, respectively. Proposed modifications to AKS safe harbors and Stark exceptions would allow health providers and hospitals to receive cybersecurity technology and services to protect against cyber related threats. Later this year the HHS Office for Civil Rights (OCR) is expected to issue a notice of proposed rule rulemaking concerning the Health Insurance Portability and Accountability Act's (HIPAA) Privacy and Security Rules and coordinated care. This forthcoming rule was preceded by a Request for Information (RFI) issued by OCR to garner input on provisions in the HIPAA privacy and security rules that could be hampering care coordination and efficiencies without meaningfully contributing to the privacy and security of protected health information (PHI). The Office of Management and Budget is reviewing the interoperability final rules from both the Office of the National Coordinator (ONC) for Health IT and CMS. The rules were received in October and September, respectively. If finalized these rules will have broad implications for the way data are shared among providers, health plans, third party health applications, and consumers.*

### **Confidentiality Coalition 2019 Activity:**

#### **December**

- Submitted a [statement](#) for the record on the Senate Commerce, Science, and Transportation Committee hearing, "Examining Legislative Proposals to Protect Consumer Data Privacy." The coalition shared its "Beyond HIPAA" Privacy Principles that convey views on the protection of health information that is not subject to HIPAA.

#### **October**

- Signed a multistakeholder [letter](#) in response to SAMHSA's proposed rule related to the confidentiality of substance use disorder patient records. The letter supported alignment of

42 CFR Part 2 with HIPAA for treatment, payment, and health care operations and urged SAMHSA to make additional modifications within its authority.

- The coalition continues to hold meetings with staff in the House and Senate as Congress considers national privacy legislation. In these meetings, the coalition emphasizes the coalition's privacy principles and the importance of streamlining privacy laws across states to ensure the flow of appropriate health information necessary to improve health and healthcare.
- Established a document of principles on privacy and security of health data not regulated by HIPAA. These "beyond HIPAA" principles are being shared with federal policymakers.

### **September**

- Presented on the regulation of health information exchange at "The Data Privacy Conference USA," sponsored by Forum Europe.
- Hosted Deven McGraw, Chief Regulatory Officer for Ciitizen and former Deputy Director for Health Information Privacy at OCR and Chief Privacy Officer (Acting) of ONC, to discuss healthcare provider compliance with the HIPAA right of individual access.

### **July**

- Presented on the privacy and security implications of draft 2 of the Trusted Exchange Framework and Common Agreement (TEFCA 2.0) at the Workgroup for Electronic Data Interchange (WEDI) Summer Forum.

### **June**

- Responded to a request for [comment](#) on TEFCA 2.0. The coalition recommended that TEFCA policies and procedures related to privacy and security align with HIPAA. The coalition also urged ONC to work with states' governors through the National Governor's Association to emphasize the importance of harmonizing states' privacy laws.
- Submitted [comments](#) in response to ONC's proposed information blocking and interoperability rule. The coalition commented on the privacy and security exceptions related to information blocking. The coalition asked ONC to ensure a thoughtful approach to how HIPAA covered entities or business associates, share electronic health information with non-HIPAA covered entities through APIs, and to ensure that third party applications are equipped to handle individually identifiable health information.
- Submitted [comments](#) in response to CMS's proposed rule on interoperability and patient access. The coalition supported private sector collaboration with technical assistance from HHS on the identification and collection of a common set of data elements using federally adopted standards to improve patient matching. The coalition also urged CMS to give Covered Plans and Agencies sufficient time to develop and test their APIs, and ensure the security of the connections they are establishing.

### **May**

- Hosted staff from ONC who presented on TEFCA.
- Submitted a [statement](#) for the record for the U.S. House of Representatives Committee on Energy and Commerce hearing on, "Oversight of the Federal Trade Commission: Strengthening Protections for Americans' Privacy and Data Security." The coalition supported the Federal Trade Commission's oversight of personal health records that reside in non-HIPAA covered entities.

## April

- Hosted staff from the Pew Charitable Trusts to discuss patient matching solutions to improve patient safety.

## March

- Hosted a “HIPAA 101” briefing for congressional staff.
- Presented “Personal Health Information Beyond HIPAA Protection” at the 28th National HIPAA Summit.

## February

- Submitted a [statement](#) for the record for the U.S. Senate Committee on Commerce, Science, and Transportation hearing on, “Policy Principles for a Federal Data Privacy Framework in the United States.” The coalition encouraged a federal data privacy framework that is consistent nationally and includes similar expectations to HIPAA of acceptable uses and disclosures for non-HIPAA-covered health information.
- Submitted a [statement](#) for the record for the U.S. House of Representatives Committee on Energy and Commerce hearing on, “Protecting Consumer Privacy in the Era of Big Data.” The coalition encouraged consistent privacy rules so that persons and organizations not covered by HIPAA that create, compile, store, transmit, or use health information operate similarly to HIPAA for acceptable uses and disclosures.
- [Wrote](#) to OCR responding to a request for information on identifying provisions of the Privacy and Security Rules, promulgated pursuant to the HIPAA, that impede the transformation to value-based healthcare or that limit or discourage coordinated care among individuals and Covered Entities without meaningfully contributing to the protection of the privacy or security of individuals’ PHI.

## January

- [Wrote](#) the National Institute of Standards and Technology responding to a request for information on Developing a Privacy Framework. The coalition encouraged harmonization with HIPAA and other existing privacy frameworks and supported a risk-based approach that could provide flexibility to organizations to implement privacy policies and controls commensurate with the level of privacy risk they have identified through the framework.
- Revised the Confidentiality Coalition’s [Principles on Privacy](#).