



March 11, 2022

The Honorable Lina Khan
Chair
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington, D.C., 20580

The Honorable Jonathan Kanter
Assistant Attorney General for the Antitrust Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20350

RE: Request for Information on Merger Enforcement

Dear Chair Khan and Assistant Attorney General Kanter:

The Confidentiality Coalition appreciates the opportunity to provide feedback on the Federal Trade Commission (FTC) and the Department of Justice's joint Request for Information on Merger Enforcement, particularly with regards to inquiries to examine competition within digital markets.

The [Confidentiality Coalition](#) is composed of a broad group of hospitals, medical teaching colleges, health plans, pharmaceutical companies, medical device manufacturers, vendors of electronic health records, biotech firms, employers, health product distributors, pharmacies, pharmacy benefit managers, health information and research organizations, and others, committed to advancing effective patient privacy and security protections. Our mission is to advocate policies and practices that safeguard the privacy and security of patients and healthcare consumers while, at the same time, enabling the essential flow of patient information that is critical to the timely and effective delivery of healthcare, improvements in quality and safety, and the development of new lifesaving and life-enhancing medical interventions.

Access to and the sharing of health data allows healthcare providers to deliver quality care and enables patients to become more engaged in their health decisions. While the Health Insurance Portability and Accountability Act (HIPAA) safeguards "protected health information" (PHI) that is held by covered entities¹ and their business associates, a vast amount of health-related information does not fall within the HIPAA regulatory framework and is largely unprotected from misuse. The COVID-19 public health emergency (PHE) has led to significant amounts of personal health information collected outside the HIPAA regulatory structure. This information should be afforded privacy and security protections that align with HIPAA. A September 2020

¹ 45 CFR 160.103, defining covered entities as health plan, health care clearinghouse, or health care provider that transmits information electronically.

survey² found that 90% of Americans are concerned about the privacy of their health data when not protected by HIPAA or other federal regulations. Providing protections for this information will build public trust in data collection so that the information can be used to improve health outcomes and be used effectively by healthcare consumers.

The Confidentiality Coalition appreciates the need to ensure that health data receives robust privacy protections. We encourage FTC and DOJ to examine existing authorities to ensure that health information is properly safeguarded as entities merge. Regulatory actions should recognize the need to protect health data not covered by HIPAA. The Confidentiality Coalition has developed “[Beyond HIPAA](#)” principles to govern the sharing of this information. These principles emphasize harmonizing any new regulatory framework with HIPAA’s Privacy, Security and Breach Notification Rules. They also advocate for individual authorization processes (including revocation of authorization) for use and disclosure of identifiable health information not covered by HIPAA. Furthermore, Coalition members support limits on the use of data beyond the expressed purpose for which authorization was given. Additionally, the Coalition emphasizes the need for broader national privacy legislation to ensure that regulatory policies are consistent with the HIPAA framework. Developing legislative and regulatory solutions to provide additional protections for consumers’ health information not covered by the HIPAA rules, and which is harmonized with HIPAA rules will build trust in data collection, give stakeholders more certainty about how to protect such information, and ultimately help improve health outcomes.

The Confidentiality Coalition looks forward to working with you on steps to improve privacy protections for non-HIPAA health data. Please contact me at tgrande@hlc.org or 202-306-3538 with any questions.

Sincerely,

A handwritten signature in black ink that reads "Tina O. Grande". The signature is written in a cursive style with a large initial "T" and "G".

Tina O. Grande
Chair, Confidentiality Coalition and
Executive VP, Policy, Healthcare Leadership Council

² Ben Moscovitch, *Americans Want Federal Government to Make Sharing Electronic Health Data Easier*, The Pew Charitable Trusts (September 16, 2020), <https://www.pewtrusts.org/en/research-and-analysis/articles/2020/09/16/americans-want-federal-government-to-make-sharing-electronic-health-data-easier>.