



DEPARTMENT OF HEALTH & HUMAN SERVICES

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OFFICE OF THE SECRETARY

Director

Office for Civil Rights

200 Independence Ave., SW Rm 506F

Washington, DC 20201

February 28, 2003

Susan S. Stuard
Director of Regulatory Affairs
Greater New York Hospital Association
555 West 57th Street
New York, NY 10019

By facsimile and first class mail

Dear Ms. Stuard:

Thank you for your letter regarding the requirements of the health information privacy regulation (Privacy Rule) issued pursuant to the Health Insurance Portability and Accountability Act (HIPAA). The Secretary and I are committed to protecting the privacy of health information through implementation of the Privacy Rule. At the same time, the Department is undertaking a broad range of efforts to assist covered entities in voluntarily complying with their obligations under HIPAA.

We have carefully considered your request to broaden the interpretation of the definition of "health care operations" to encompass all government-mandated reporting, so that covered health care providers would not be required to account to individuals for such disclosures. We do not believe that the regulations permit an interpretation of "health care operations" that is as broad as you suggest. The definition of "health care operations" is designed to identify those activities of a covered entity that support that entity's ability to provide treatment to individuals or to pay or be paid for such health care. Many disclosures that are required by law do not significantly further a covered entity's health care operations; rather, they further other important public purposes, such as reporting child abuse, injuries due to violence, domestic violence or elder abuse, or responding to court orders. As such, your request cannot be accomplished by a policy interpretation, since it would necessitate a rule change to exempt disclosures that are required by law from the accounting requirement.

Indeed, during our review of public comment on the modifications to the Privacy Rule proposed last year, we considered, but ultimately did not adopt, a proposal to exempt from the accounting disclosures that are required by law. The accounting requirements are designed to permit individuals to learn the non-health care purposes for which their protected health information was disclosed by covered entities. The Privacy Rule excepts from the accounting certain disclosures, including those authorized by the individual and disclosures for treatment, payment, and health care operations purposes, because individuals already know of these disclosures, or typically expect that those disclosures occur. By contrast, individuals are less likely to have similar

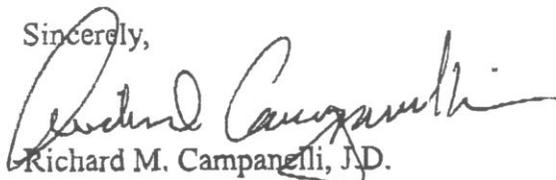
knowledge or expectations about disclosures that covered entities may make to comply with law.

With respect to the accounting standard, we note that, like other privacy standards, it is designed to be flexible and scalable. Thus, the Rule does not require that disclosures be tracked individually; rather, a covered entity is free to design a system that efficiently permits an accounting to be provided upon an individual's request. For example, for the mandated reports described in your letter, most – if not all – of the information that is required for the accounting may be obtained by a review of information that already is typically reflected in the patient's medical records. It would be sufficient to prepare a standard checklist of such reports, which could then be completed and provided to those individuals who request an accounting. The Rule permits this or other simplified means of providing the required accounting.

We thank you for your thoughtful suggestion on how to improve the operation of the Privacy Rule and hope our comments are helpful in assisting your members with their compliance efforts. Additional information, guidance, and technical assistance materials to facilitate compliance with the Privacy Rule are available on our website: <http://www.hhs.gov/ocr/hipaa/>. As the Privacy Rule is implemented, the Department will continue to carefully monitor its impacts to assure that the Rule does not have any unintended negative effects on patient access to quality health care. If we find that such effects arise, we can consider proposing modifications to the Rule. In addition, we will continue to publish guidance and technical assistance materials to ensure covered entities have the tools they need to implement the Privacy Rule in an effective and efficient manner.

If you have any further questions, please do not hesitate to contact me.

Sincerely,



Richard M. Campanelli, J.D.

Director

Office for Civil Rights