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Report on Patient Privacy Volume 21, Number 1. January 07, 2021 On the Eve of a New Administration, OCR Offers 'Comprehensive Reforms' to HIPAA

By Theresa Defino

With barely a month left before the Biden administration is set to take over, the HHS Office for Civil Rights (OCR) announced a proposed regulation that would dispense with the requirement for providers to obtain acknowledgement from patients that they have received a notice of privacy practices (NPP).[1]

The new notice of proposed rulemaking[2] (NPRM) also would reduce the time a provider or health plan has to respond to a request for medical records to 15 from 30 days, among other changes, if finalized as proposed. But given the timing of the NPRM, that's a big if.

Indeed, as of *RPP*'s deadline, the NPRM remained in regulatory limbo and had not yet been published in the *Federal Register.* Still, HHS and OCR leaders used glowing terms for the NPRM and their own efforts during the past four years last month in a call with *RPP* and other reporters.

For covered entities (CEs) and business associates, any proposed changes are a long way from becoming reality, and there is no reason now to implement the revisions—except on a voluntary basis. For example, a CE could always implement quicker turnaround times on records access if it decided this would be a reasonable business decision and might better serve patients.

At a minimum, however, organizations should review the NPRM to see if there are topics about which they would like to comment; once the NPRM is published in the *Federal Register*, OCR has planned for a 60-day comment period.

But even that is subject to change. NPRMs of the length and breadth of this one are often accompanied by comment periods of 90 days. It is likely that organizations may push for more comment time, given this is being released as the COVID-19 pandemic continues to accelerate and providers and other health care stakeholders are stretched thin like never before.

It remains to be seen what the incoming Biden administration will do with the NPRM. At a minimum, it is expected to go through a review by incoming HHS leaders and could be revised significantly, changed in a minor way or withdrawn altogether. Because it is a proposed—and not final—regulation, it would not be subject to the automatic hold on "midnight" rules and guidance the Biden administration intends to issue on inauguration day.[3] But there's no guarantee it will be issued in any form by the Biden administration.

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