



January 30, 2023

The Honorable Xavier Becerra  
Secretary, Department of Health and Human Services  
200 Independence Avenue SW  
Washington DC 20201

RE: HHS OCR-0945-AA16

Dear Secretary Becerra:

I am writing on behalf of the National Association of Benefits and Insurance Professionals (NABIP), formerly NAHU, an association representing over 100,000 licensed health insurance agents, brokers, general agents, consultants, and employee benefits specialists. We are pleased to have the opportunity to comment on the proposed rule titled “Confidentiality of Substance Use Disorder Patient Records.”

The members of NABIP work daily to help millions of people and businesses purchase, administer, and utilize health insurance coverage. For many of our members, a core part of their business includes helping self-funded group health plan sponsors maintain compliant health and welfare plans. This includes ensuring that these plans are fully compliant with the protected health information privacy and data security protections included in the Health Insurance Portability and Accountability Act (HIPAA) and Health Information Technology for Economic and Clinical Health Act (HITECH) and related regulations. NABIP members help self-funded group plan sponsors ensure the privacy of PHI by conducting HIPAA/HITECH trainings, maintaining compliance manuals, and assisting with the preparation and distribution of HIPAA/HITECH privacy notices. Accordingly, we are pleased to have the opportunity to comment on the proposed rule.

NABIP members generally support the provisions in this measure and the overall themes of protecting patient privacy and records concerning treatment related to substance-use challenges from unauthorized disclosures, attempting to reduce discrimination in treatment, and increasing coordination among providers in treatment for substance-use challenges. While most of the provisions in the proposed rule are directed toward healthcare providers, there are some parts of the proposed changes that will impact health insurance issuers, including the sponsors of self-funded group health and welfare plans. In particular, the proposed changes to the notice of privacy practices (NPP) will need to be addressed by self-funded groups, and these changes will necessitate updates to their HIPAA/HITECH training practices and procedural manuals.

Our association particularly appreciates that the proposed rule includes draft text and explicit directions regarding needed revisions to the NPP rather than simply directing covered entities to update their existing notice based on the proposed changes to 42 CFR Part Two regarding covered information consent, disclosure, and revocation requirements. To make compliance even easier on covered entities, NABIP members suggest that completed draft example revisions accompany the text of any final rule. We would suggest that the release of at least two example NPPs—one directed at providers, and the other directed at payers and health coverage issuers.



However, it is important to point out that if this proposed rule is finalized, then there will be more work needed to make sure all covered entities come into compliance with the new 42 CFR Part Two covered information consent, disclosure, and revocation requirements. In the preamble to the proposed rule, your department requests comments from experts on ways to ease implementation of the updated NPP. Since the overall rule is directed mostly at healthcare providers, it is likely that many issuers and third-party administrators will not realize right away that NPP requirements have changed. This is especially going to be true for self-funded group health plan sponsors, who generally have limited resources to monitor this type of legal activity.

While NABIP members will work to educate self-funded plan sponsors about the regulation and the related need to update NPPs and other related plan materials, it may be difficult to reach all entities offering employees self-funded group health insurance coverage. Given that approximately 65 percent of American employees and their families receive their health insurance coverage through self-funded group benefit plans, we believe that directing Department resources toward the education of self-funded plan sponsors would be prudent. In addition to the publication of a completed draft template notice with any final rule, we suggest the development of compliance tools such as a HIPAA/HITECH compliance checklist, sample updates to HIPAA/HITECH manuals, and materials to assist plan sponsors in updating their HIPAA/HITECH training materials to reflect any changes to consent, disclosure and revocation requirements.

Thank you for the opportunity to provide input on the proposed changes to the HIPAA/HITECH privacy and data security requirements to better protect the privacy of substance use disorder patients and help ensure their better access to care. If you have any questions about our comments or need more information, please do not hesitate to contact me at (202) 595-0639 or [jtrautwein@nabip.org](mailto:jtrautwein@nabip.org).

Sincerely,

Janet Stokes Trautwein  
Chief Executive Officer  
National Association of Benefits and Insurance Professionals