



April 20, 2016

Director Jocelyn Samuels  
Office for Civil Rights  
U.S. Department of Health and Human Services  
200 Independence Avenue, SW  
Room FL5-15F  
Washington, DC 20201

VIA ELECTRONIC MAIL AND REGULAR MAIL

Dear Director Samuels:

On behalf of the American Health Information Management Association (AHIMA), I write to express concern over certain aspects of the Office for Civil Rights (OCR) guidance issued in February 2016 pertaining to appropriate fees for copies of individuals' medical records.

AHIMA is the national non-profit association of health information management (HIM) professionals. Serving 52 affiliated component state associations including the District of Columbia and Puerto Rico, AHIMA represents over 103,000 health information management professionals dedicated to effective health information management, information governance, and applied informatics. AHIMA's credentialed and certified HIM members can be found in more than 40 different employer settings in 120 different job functions—consistently ensuring that health information is accurate, timely, complete, and available to patients and providers. AHIMA provides leadership through education and workforce development, as well as thought leadership in continuing HIM research and applied management for health information analytics.

As a member of the GetMyHealthData campaign, AHIMA has long advocated that consumers' access to their health information is essential to improved health and healthcare and we will continue to support OCR's efforts to clarify an individual's right to access their health information. That said, a number of our members are troubled by some aspects of the recent guidance. Below are several concerns that have been brought to our attention by our members.

### **Clarification of Fee Pricing Methodology**

As you know, the current guidance suggests how a covered entity may charge a reasonable, cost-based fee for individuals' (or their personal representatives) to receive (or direct to a third party) a copy of the individuals' protected health information (PHI). A number of our members have expressed concerns about the unintended consequences in using one fee method versus another. Specifically, they are concerned that individuals (or their third party representatives) will demand that they be charged the recommended \$6.50 flat fee for electronic copies of PHI versus the actual or average cost methodologies. As a result, HIM departments may be unable to cover the costs associated with providing such information. Additionally, our members are concerned that should they use one of the three methods and the individual (or their third party representative) disagrees with the costs

associated with the method used, it could open their facility up to a potential OCR complaint. Consequently, we ask that OCR provide greater clarity on the implications of a covered entity using one fee method versus another, as well as further guidance on the ability of an individual (or their third party representative) to contest or challenge the methodology used by the covered entity.

### **Third Party Representative**

A number of our members are also troubled by the ability of certain entities including attorneys, when serving as an individual's personal representative, to use an individual's right of access to have a covered entity send the individual's PHI to a third party. Our members are concerned that by using this authority, the third party representative may demand that the covered entity use the flat fee methodology for an electronic copy of the PHI, thereby disallowing the HIM department to cover associated costs. While we understand and acknowledge that an individual's personal representative is generally dictated by state law and that these laws can vary from state to state, we ask that OCR provide greater clarity and guidance as to what extent or in what circumstances such a third party representative could use the above fee structure to obtain a copy of an individual's PHI.

### **Potential Audits and Delayed Implementation of Guidance**

Finally, a number of our members may be unable to immediately comply with the guidance, particularly covered entities that have not fully embraced electronic health record (EHR) technology. For that reason, there is a genuine concern by a number of our members that failure to comply with the guidance could lead to a potential audit by OCR and subsequent enforcement action. Consequently, we respectfully request that OCR consider a 180 day "grace period" to allow covered entities the opportunity to implement the guidance at their facility and to allow covered entities to seek additional clarity on certain aspects of this guidance from OCR.

We thank you for the opportunity to express our concerns regarding the recent OCR guidance. We will continue to support OCR's efforts to provide guidance on this issue and we look forward to working with you to ensure that individuals can access their health information to empower them to make well-informed decisions about their health and healthcare. Should you or your staff have any additional questions or comments, please contact Lauren Riplinger, Senior Director, Federal Relations, at [lauren.riplinger@ahima.org](mailto:lauren.riplinger@ahima.org) and (202) 839-1218, or Pamela Lane, Vice President, Policy and Government Relations, at [pamela.lane@ahima.org](mailto:pamela.lane@ahima.org) and (312) 233-1511.

Sincerely,



Lynne Thomas Gordon, MBA, RHIA, CAE, FACHE, FAHIMA  
Chief Executive Officer