

January 8, 2016

VIA ELECTRONIC MAIL

Rules Coordinator (rulescoordinator@oic.wa.gov)
Policy and Legislative Affairs Division
Office of the Insurance Commissioner
P.O. Box 40258
Olympia, WA 98504-0258

Re: Comments on OIC Proposed Rule on Issuer Disclosures, Notices and Processes to Protect Privacy of Health Care Information (R 2013-11, Dec. 3, 2015 Stakeholder Draft)

Dear Rules Coordinator:

On behalf of the undersigned organizations, we submit these comments on the December 2015 Stakeholder draft of proposed rules relating to the confidentiality of health care information for minors, victims of domestic violence, and young adult children. Our organizations, which include health care providers and advocates, have a strong interest in protecting patients' rights to privacy in health care information and their rights to comprehensive, quality health services.

As you are aware, privacy of health care is a critically important issue for many minors, survivors of intimate partner violence, and young adults. Without assurances that their access to services will remain confidential, these patients will often forgo the health care services they need, such as STI testing, mental health and substance abuse counseling, or reproductive health services. Equally concerning, if these patients have already accessed services, they may be subjected to dangerous consequences if their personal information is disclosed to others.

The current status quo remains that, despite existing privacy protections in federal and state law, inadvertent breaches of confidential information occur when Explanations of Benefits (EOB) and other insurance communications that disclose access to confidential services are made accessible to the policy holders or responsible parties other than the patient. We appreciate that the Office of the Insurance Commissioner is taking steps to ensure that consumers' personal health care information is protected. However, we remain concerned that the proposed rules do not do enough to prevent disclosure of confidential information. Overall, we urge the Department to consider foremost that the purpose of the rules is to protect the most vulnerable health care consumers from unauthorized disclosures about their health care services or payment by their insurance companies.

Our specific concerns are as follows:

First, we suggest that while continuing to support the rights of minors and young adults, the proposed rules also include greater protections for survivors of intimate partner violence. The rules purport to include victims of domestic violence, but there are few provisions in the rules specific to ensuring these survivors are provided with the critical protections and services they need. For example, the authorizations and claim requests added to the proposed rules include health services for minors, but do not include services specific to domestic violence victims, such as domestic violence counseling and screening.

We appreciate the intent of the proposal that licensees must not disclose personal health information of covered members when those members state that the disclosure could jeopardize their safety. Greater clarification regarding this provision is necessary, however. For example, OIC should include that the covered member does not need to provide an explanation or facts regarding how or why disclosure could specifically jeopardize their safety, as this information can be highly sensitive and personal. The covered member's statement that the disclosure would jeopardize their safety should be sufficient for the request.

We are also concerned that lack of clarity may result in a number of potential loopholes in the proposed rules. For example, the phrase "necessary for the licensee to perform its insurance functions" in subsection (2)(b) of the proposed changes to WAC 284-04-505 (Right of covered member to limit disclosure of information) should be applied in a narrower and more specific manner. This is critical, especially due to this provision's connection to RCW 70.02.050 mentioned in subsection (2)(c), allowing disclosure of health information for payments and claims made to insurance companies.

Similarly, we are also concerned with subsection (6) of the proposed changes to WAC 284-04-505. The subsection could be interpreted to allow for disclosure of personal health information to a family member (such as a parent or spouse) in direct conflict with the covered member's wishes if that person is considered by the licensee to be "someone who is involved in the covered member's care."

Additionally, we encourage that the OIC use more precise language when discussing what "policies, standards, and procedures" must be developed pursuant to this rule, specifically as mentioned in subsection (12) of WAC 284-04-504 to ease implementation and therefore enforcement of the rule. We want to ensure that insurance carriers have the clearest expectations possible when implementing these new requirements, and the phrase "policies, standards, and procedures" could use further definitions.

Comments on R 2013-11

Jan. 8, 2016

Page 3

Thank you very much for this opportunity to comment on the proposed rules. The proposals are a step in the right direction, but require additional changes to more fully achieve their intended result of improving patient privacy of health care information.

We look forward to continuing to engage in discussion with the OIC and with other stakeholders to develop final rules to address this important issue. We plan to follow up in the coming months with additional suggestions and comments.

Sincerely,

(listed in alphabetical order)

American Congress of Obstetricians and Gynecologists, Washington Section

Cedar River Clinics

Gender Justice League

Legal Voice

Northwest Health Law Advocates

Planned Parenthood Votes Northwest and Hawaii