May 18, 2010

U.S. Department of Health and Human Services
Office for Civil Rights
Attention: HITECH Accounting of Disclosures
Hubert H. Humphrey Building, Room 509F
200 Independence Avenue, SW
Washington, DC 20201

Dear Sir/Madam:

On behalf of children’s hospitals across the country, the National Association of Children’s Hospitals (N.A.C.H.) appreciates the opportunity to provide comments on the HIPAA Privacy Rule Accounting of Disclosures Under the Health Information Technology for Economic and Clinical Health Act; Request for Information (RFI), published by the Department of Health and Human Services (HHS) Office of Civil Rights (OCR) in the Federal Register on May 3, 2010. We appreciate the OCR reaching out to the provider community on the important topic of expanding accounting of disclosures of protected health information (PHI) for treatment, payment, and health care operations.

Children’s hospitals share the federal government’s commitment to using Health Information Technology (HIT) to improve clinical care, care coordination, quality of health care, and providing medical information to children and their families. Children’s hospitals also believe that patients’ PHI must be private and secure in order to obtain the public’s trust in the use of HIT.

When it comes to Electronic Health Record (EHR) systems, many children’s hospitals are in the forefront of EHR implementation and use. Based on the latest HIMSS Analytics EMR score data for 2009, children’s hospitals identified as NACHRI members showed significantly greater percentages of hospitals in the higher stages of the HIMSS EMR model compared to the rest of the industry. The higher stages are comprised of stages 4-7 where children’s hospitals had 43 percent of their hospitals in these latter stages compared to 14 percent for the rest of the hospitals. This is an extraordinary achievement that highlights the commitment children’s hospitals are making to improving care through better technology. Based on this experience, children’s hospitals are very aware of EHR privacy and disclosure issues. Although children’s hospitals have robust EHR systems that allow for creating audit logs of data, we are concerned with the potential of expanding the accounting of disclosures to include disclosures for treatment, health care operations and payment.
N.A.C.H. respectfully requests that the HHS OCR review and strongly consider the following points:

- Children’s hospitals believe that requiring covered entities with electronic health records to have the capacity to produce an accounting of disclosures of protected health information from an electronic health record for treatment, payment, and health care operations over a three-year period reflects an unrealistic sense of the ability of children’s hospitals and other covered entities to track and compile this information. Such proposals would impose significant cost burdens on children’s hospitals to develop capacities that, in our hospitals’ experience, are sought only rarely by patients. The systems in place today are not mature enough for the requirements of accounting disclosures for health care operations, treatment and payment.

- A typical children’s hospital has multiple enterprise information systems, databases and applications that contain electronic protected health information, as well as smaller departmental systems and applications. Although most of these systems have audit log capabilities, they are not designed to track disclosures as required by the expanded accounting of disclosures requirements. Oftentimes, these systems do not “talk” to each other so in order to comply with the expanded disclosure accounting requirements, there will have to be significantly more resources employed in order to piece through the different audit logs to compile a report that can be easily used. In other words, compiling an accounting of disclosures from every electronic system cannot be accomplished easily. Instead, it would require extensive professional time to identify which electronic systems may have been accessed. In addition, it will take more time to collect and review any information that might be relevant from each of those systems and create one single report that presents the information to the patient in a useful way.

- Complying with these expanded auditing requirements with the current technology in place will significantly drive up costs at a time when many hospitals across the country are struggling financially. Moreover these additional costs are not consistent with intent of the EHR incentive payment programs.

- Complying with an expanded accounting of disclosures for treatment, payment and health care operations of an electronic health (or medical) record will be problematic because there is no clear definition of what comprises a legal electronic health record. Currently, many systems interact (or dump) data into a hospital’s EHR and some of these systems are not considered part of the EHR. Therefore having a practical definition for a legal electronic medical record for institutions with multiple systems is essential in making sure hospitals are compliant.

We commend the OCR for addressing the issue of PHI disclosure from a patient’s electronic health record. We strongly advocate for patients’ rights to access their data in an electronic health record and to whom this data is released to by their providers. For pediatric patients, these rights must also be extended to parents/guardians. Patients and parents/guardians must be educated on their right to access this information but given the reasons mentioned in this letter we believe their query must be specific in order to provide a focused report for them. Expanding
auditing of disclosures for treatment, payment and health care operations as proposed is too broad and unworkable with present EHR capabilities at most children’s hospitals. A good first step will be for the OCR to conduct trials to see how much this requirement would cost before making it a requirement for all providers. In addition, providing a practical definition for a legal electronic medical record for providers with multiple systems will be very helpful.

We appreciate the opportunity to provide information on the HIPAA Privacy Rule Accounting of Disclosures under HITECH. For additional information on our comments, please contact Allan Castro at 703/797-6077 or acastro@nachri.org or Aimee Ossman at 703/797-6023 or aossman@nachri.org.

Sincerely,

M. James Kaufman, PhD
Vice President, Public Policy