February 11, 2019

The Honorable Alex M. Azar, II
Secretary
The U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

Submitted electronically to www.regulations.gov

Re: Comments on HHS-OCR-0945-AAOO, “Request for Information on Modifying HIPAA Rules to Improve Coordinated Care”

Dear Secretary Azar:

The American Association for Homecare (AAHomecare) is pleased to submit comments on the Department of Health and Human Services’ (HHS’) above captioned Request for Information (Request). AAHomecare members include a cross section of suppliers, manufacturers, and other industry stakeholders that assist, make or furnish Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) that Medicare beneficiaries use in their homes. Our members are proud to be part of the continuum of care that assures Medicare beneficiaries receive cost effective, safe and reliable home care products and services. As such, our comments are focused on the Request as it pertains to DMEPOS.

Importance of Coordination of Care

AAHomecare recognizes that the standard fee-for-service (FFS) compensation methodology for health care providers is outdated and inefficient. Under the FFS model, a provider is paid for the services/products it furnishes...regardless of their effectiveness in treating the beneficiary. Further, the FFS model does not encourage coordination among providers. Essentially, each provider “operates in a silo.” Too often, the provider does not have a stake in whether (i) the overall care to the beneficiary is cost effective and (ii) the care results in improvement to the beneficiary’s health.

AAHomecare supports HHS’ interest in modifying “the HIPAA Rules to remove regulatory obstacles and decrease regulatory burdens in order to facilitate efficient care coordination and/or case management and to promote the transformation to value-based care, while preserving the privacy and security of PHI.”

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Indeed, suppliers of DMEPOS (DME suppliers) are central to such coordination. DME suppliers furnish equipment and products designed to (i) allow beneficiaries to live independently in their homes (as opposed to living in more expensive facilities) and (ii) reduce the incidences of physician and costly hospital visits. Unlike most other health care providers, DME suppliers have regular communications with beneficiaries and their caregivers. These communications allow DME suppliers to report to, and coordinate with, treating physicians.

Health care providers that should collaborate include physicians, therapists (respiratory, physical and occupational), DME suppliers, home health agencies and pharmacies. When such collaboration occurs, beneficiaries are treated more cost effectively, beneficiaries avoid unnecessary physician and hospital visits, and the Medicare program saves money.

**Coordination of Care and its Relationship to HIPAA**

When health care providers work together in delivering patient care, challenges arise. Specifically, any time a provider shares a patient’s medical information (Protected Health Information or PHI) with another provider, then restrictions and/or prohibitions, set out in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), apply. And yet, sharing of PHI is necessary for there to be effective coordination of care. While it is important that protection against unauthorized sharing of PHI be maintained, it is equally important that the Medicare program encourage and facilitate the coordination of care.

**Impact of HIPAA on Care Coordination**

HIPAA is designed to prevent the use and/or disclosure of PHI unless certain conditions are met. HIPAA describes specific instances when PHI can be used and/or disclosed. For example, HIPAA permits a covered entity (as that term is defined under HIPAA) to use and/or disclose PHI for the purposes of treatment, payment and health care operations (TPO). While the existing HIPAA guidelines have served the Medicare program well, they are proving to be inadequate as health care moves to a coordination of care model. As such, AAHomecare supports the goal of modifying HIPAA to facilitate coordination of care.

**Response to Request for Information**

**Notice of Privacy Practices**

HHS inquires in paragraphs 43 through 53 about the challenges that providers face by adhering to HIPAA’s requirements regarding notices of privacy practices (NPP) and whether the existing rules meaningfully benefit patients. The experience of AAHomecare members shows that the NPP requirement (i) imposes an unnecessary burden on suppliers and (ii) does not meaningfully benefit patients.

DME suppliers, like many other health care providers, make their NPPs available on a public-facing website. They also bundle a written copy of the NPP with other intake paperwork. DME suppliers take these steps in order to be efficient as they educate patients about how the supplier may use the patients’ PHI.

Unfortunately, patients regularly do not return a signed acknowledgement of receiving the NPP, often explaining that they did not think they had to return a copy. Patients’ failure to return an acknowledgement forces DME suppliers to “chase down” patients in order to meet HIPAA requirements. This diverts labor away from serving the equipment needs of the patients. For small DME suppliers, this
may be a few hours a month. For larger suppliers, this is a full-time job for one or more employees. This results in a large number of hours that the DME supplier cannot devote to patient care.

According to AAHomecare members, patients are unconcerned about the details contained in the NPP. AAHomecare is not aware of members receiving questions from patients about the NPP.

For the above reasons, AAHomecare supports dispensing with the requirement that providers make a good faith effort to obtain an individual’s written acknowledgment of the receipt of the NPP.

Accounting for Disclosures of TPO

HHS inquires in paragraphs 27 through 42 about the challenges that providers face by adhering to HIPAA requirements regarding accounting for the disclosure of PHI. AAHomecare is not aware of any of its members receiving a request from a patient for an accounting of disclosures of PHI. This includes national, regional and local DME suppliers. Obligating DME suppliers to program their databases to record disclosures of TPO would only benefit the consultants that DME suppliers would have to rely upon to facilitate such programming. Given how DME suppliers routinely disclose PHI to third party payors and to other health care providers, many suppliers do not have the resources to pay for the necessary enhancements to their software.

Guidance on Electronic Communication Minimum Standards

At the end of the Request, HHS requests ideas not otherwise covered by the Request. In response, AAHomecare asks HHS to provide specific minimum criteria for securing electronic communications.

Most health care providers (e.g., physicians and hospitals) refuse to send PHI to AAHomecare members except by facsimile. Providers use fax because of a fear that the Office for Civil Rights will consider e-mailing PHI to be a HIPAA violation. Consequently, DME suppliers must use an old and inefficient means of communicating with physicians and hospitals. This inefficiency affects care coordination because DME suppliers cannot provide equipment and supplies without all of the relevant information.

HHS can enable health care providers to enhance patient care by providing specific minimum criteria for securing electronic communications. Whether it is encryption to a certain degree or some other control, a clear articulation of the regulatory floor will give providers what they need to exchange PHI most efficiently.

Sincerely,

Kim Brummett
Vice President, Regulatory Affairs