

Report on Patient Privacy Volume 20, Number 2. February 06, 2020 Judge Invalidates OCR's Third-Party Requirements Under Access Rights

By Theresa Defino

A federal judge has ruled portions of the HHS Office for Civil Rights (OCR) requirements applied to fees for copies of medical records invalid,^[1] opening the door to higher costs to patients who request that their records be sent somewhere other than to themselves directly.

The ruling is a victory for Ciox Health LLC, which sued in 2018, alleging that OCR's so-called "third-party directive" was ruining their profits and was illegal.^[2]

On Jan. 23, Judge Amit P. Mehta with the First District Court for the District of Columbia issued a 55-page, three-part opinion, stating that (1) HHS's 2013 rule on access "compelling delivery of [protected health information] to third parties regardless of the records' format is arbitrary and capricious insofar as it goes beyond the statutory requirements set by Congress; (2) HHS's broadening of the Patient Rate in 2016 is a legislative rule that the agency failed to subject to notice and comment in violation of" the Administrative Procedures Act, and "(3) HHS's 2016 explanation concerning what labor costs can be recovered under the Patient Rate is an interpretative rule that HHS was not required to subject to notice and comment." The third aspect is a victory for HHS, however limited.

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