

Report on Patient Privacy Volume 19, Number 10. October 10, 2019 Just Get It Done: Amid \$85K Penalty, CEs Must Address Roadblocks Thwarting Records Release

By Theresa Defino

Whether it's a refusal to honor an electronic signature, insistence on fantastically created charges, or just the slow churn of a large organization, a number of factors can thwart a hospital or other provider's ability to meet the timeliness standard to produce patient records as set by the HHS Office for Civil Rights (OCR).

Bayfront Health St. Petersburg, of Florida, said it was "clerical errors" that tripped up fulfillment of a mother's 2017 request for fetal heart monitor records and led to her complaint to OCR. Regardless of the reasons for the delay, OCR cried foul. Last month Bayfront became the first organization to feel OCR Director Roger Severino's wrath on this issue (he has spoken about giving up his own records request in frustration), agreeing to pay \$85,000 and adopt a one-year corrective action plan (CAP).^[1]

According to the timeline OCR provided, the mother, who was not identified, requested the records in August 2017 but didn't get them from Bayfront until February of this year. Apparently, it took the intervention of both her attorney and OCR to make that happen.

In light of OCR's action, covered entities (CEs)—and their business associates (BAs) who often fulfill these requests—need to hone their systems to ensure they meet a patient's needs within 30 days or properly extend the time frame as allowed.

Announced Sept. 9, the settlement is the second enforcement action OCR has taken related to patients obtaining their records, although the first, which involved a fine of \$4.3 million levied against a defunct organization called Cignet Health that was never paid, occurred nearly 10 years ago.

The right to obtain medical records is one of the less-visible aspects of the privacy rule under HIPAA, and save this new settlement and the sanction against Cignet, all of OCR's previous enforcement actions have dealt with violations such as the failure to encrypt mobile devices, having unsecure systems leading to hacking, and lacking a BA agreement. Some have resulted in multimillion-dollar payments; the \$85,000 pales in comparison.

Nonetheless, Bayfront's settlement shines a much-needed light on a festering problem and was welcomed by patient advocates, such as Chris Carpenter, who are using it in their fight to convince providers that there are consequences to not handling records requests appropriately. "I was pleasantly shocked" to learn of the settlement, says Carpenter, CEO and founder of ChartSquad LLC, a national records retrieval company for patients based in California.

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