

**\*\*\*NEWS RELEASE\*\*\***

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## ***Citizens' Council for Health Freedom Responds to HHS Interoperability and 'Information Blocking' Request with Solutions to Protect Patients***

***CCHF's Twila Brase: 'Interoperability Is Not What the Doctor Ordered' and Not Only Harms Patients But Will Keep Well-Trained, Highly Motivated Doctors from Entering the Profession***

ST. PAUL, Minn.—[\*Citizens' Council for Health Freedom \(CCHF\)\*](#) is weighing in on the “heart” of the interoperability matter within health care.

The Office for Civil Rights (OCR) at the U.S. Department of Health and Human Services (HHS) recently issued a Request for Information (RFI) on [\*“Interoperability, Information Blocking, and the ONC Health IT Certification Program.”\*](#) According to HHS, the proposed rule “would implement certain provisions of the 21st Century Cures Act, including conditions and maintenance of certification requirements for health information technology developers under the ONC Health IT Certification Program.” HHS says the “implementation of these provisions would advance interoperability and support the access, exchange, and use of electronic health information.”

But *CCHF* warns that interoperability and the expanded exchange of electronic health information will harm patients and further violate their privacy rights.

***“Unfortunately, the electronic health record (EHR) mandate, combined with the permissive HIPAA data-sharing rule, has eliminated patient privacy rights for most Americans, allowing their data to be shared broadly nationwide, perhaps globally, without their consent,” CCHF president and co-founder Twila Brase wrote to HHS Secretary Alex Azar. “Only patients who pay cash and know that cash payment gives them the right to ask for privacy protections—as well as patients in a few states with real privacy laws (e.g. Minnesota)—continue to have some medical privacy rights. Notably, the proposed rule mentions privacy 329 times by our count, but doesn’t actually protect it, at least not at the federal level which is under HIPAA with some exceptions. But, as HHS surely understands, HIPAA permits unprecedented disclosure and use of private patient information without patient consent.”***

Additionally, where the proposal highlights “consent for use of restricted data,” relatively little data is restricted for disclosure or use under HIPAA.

***“Thus HIPAA ‘privacy’ protections are mostly security protections,” Brase said. “In short, HIPAA requires confidential data be kept secure during continued use and disclosures, without patient consent, to prevent access by anyone who is not allowed by HIPAA to disclose and use the data. Furthermore, there’s no requirement to honor a patient’s request for privacy. Therefore, we find little about this interoperability proposal that protects patient privacy, while striving to share it more broadly. That said, federal law still***

*allows states to pass real privacy laws, as Minnesota did three decades ago—an example every other state should follow.”*

*CCHF* also called attention to the dangers of today’s EHRs, which make patients vulnerable to hackers and system shutdowns, divert doctors’ time and attention away from patients, impede critical thinking and proper diagnoses, facilitate surveillance, and force the EHR—not the patient—to be the focus of the exam room visit.

*“The EHR is also coercive,” Brase added. “It forces physicians and nurses to report on their patients, violating confidences and the patient-doctor relationship. It forces physicians and clinic staff to ask questions that have nothing to do with that visit. It forces physicians to follow treatment protocols determined by executives and officials far from the bedside or exam room, diverting the doctor’s critical thinking skills, eyes and listening ears from patient faces, vocal inflections and physical examinations as they click box after box after box in the EHR.”*

In its comments to HHS, *CCHF* pointed to the recent report, [“Death by a Thousand Clicks: Where Electronic Health Records Went Wrong,”](#) an extensive investigation of EHRs by Fortune and Kaiser Health News.

*“Death and injury are known—from the EHR,” Brase said. “Even the FDA has testified to these dangers. Critical orders have not been transmitted. Diagnoses have been missed. Finding data among the various screens and drop-down menus is difficult. There are glitches galore.*

*“This disaster for patient care is not surprising given that the mandate was premised on the promises of those who would most likely benefit from the \$36 billion in federal grants and the five-year buy-it-or-be-penalized deadline imposed on medical practices and hospitals,” she continued. “As a result of the rush to design and purchase, today’s EHRs don’t work for those forced to use them. Furthermore, patient-centric programming is inherently difficult because it can’t be standardized, and patients aren’t widgets. Thus, EHRs hurt the most vulnerable of all—the patients and their families forced to deal with the resulting deaths, delays, medical errors and injuries.”*

*CCHF* calls the mandated EHR a “government EHR,” which is certified to do what the government wants it to do, such as tracking, data-sharing and “population health,” not what the patient and doctor need it to do.

*“Unfortunately, earlier EHRs that once worked well for doctors and their patients have been jettisoned to avoid the federal penalties imposed for failing to buy and use the government EHR,” Brase said. “The government EHR, combined with the permissive HIPAA rule, has opened the exam room door, letting an untold number of third parties into confidential conversations and private lives—virtually, through public and private health information networks that share patient data nationwide as permitted by HIPAA, and physically, through the uninvited ‘scribes’ now in exam rooms recording everything patients say to doctors.”*

Brase also noted that the proposed 690-page regulation does not remedy the intrusions and dangers patients now face. It may indeed worsen it.

*“More money and staff diverted from patient care to follow the ‘no information blocking’ rule, more opportunities to be penalized, more fear and less trust in the exam room, mandates to more completely violate patient confidentiality, more reasons for doctors and nurses to pay attention to the rules, not their patients, and more reasons for independent physicians to exit the practice of medicine and leave behind the patients who depend on them,” Brase said.*

*“The government EHR is a travesty—mandated by Congress and funded by taxpayers, who have now been put in harm’s way,” she continued. “Furthermore, the government EHR has not cut costs or been the wonder-technology advertised. Instead, direct and indirect costs have skyrocketed. These include purchasing, installing, training, maintaining, updating, securing, onboarding, new staff and leasing, to name just a few.*

***“Interoperability is not what the doctor ordered.”***

In fact, Brase says, the government EHR, and the complex regulations attached to this intrusive command-and-control technology system, will encourage fewer physicians to stay in practice and discourage many critically thinking, highly motivated candidates for medical school, leaving fewer well-trained physicians available to a population in which Medicare enrollment is growing at 10,000 American senior citizens every day.

***“The impending physician shortage will not be helped, and could be hastened, by hunting for the ‘[unicorn](#)’ called interoperability,” she said.***

The right solution does await, **CCHF** says. Leaders should look at the real problem, instead of layering more regulations onto the problem in hopes of fixing this faulty technology.

***“The proposed fixes do not aim to fix the fundamental problems of the EHR, or the troubling use of them to violate patient rights and medical ethics,” Brase wrote. “The real problem is the ubiquitous existence of poorly planned, hastily imposed government EHRs that were never built for patient care. This regulation prohibiting ‘information blocking,’ which not everyone agrees even exists, will not solve that problem.***

***“The solution to today’s technological disaster, which was foisted untried on doctors and their patients, is clear: End the EHR mandate. Stop this costly and dangerous experiment on patients.”***

**CCHF** also gives HHS several action steps:

- HHS must tell Congress the truth about EHRs—that they are hurting patients—and advise Congress to end the EHR mandate, eliminate the penalties and reverse HIPAA to protect patient consent rights.
- HHS should focus on restoring patient safety, confidentiality, trust and patient-centered medicine.
- HHS should publicly acknowledge the dangerous failure of this poorly planned EHR mandate and use its regulatory authority to restore privacy and consent rights.

***“We call on you, Secretary Azar,” CCHF concluded, “to withdraw this rule and inform Congress that HHS is not willing to advance a technology system that violates medical ethics, conducts exam room surveillance, destroys medical excellence, has already led to patient deaths and is putting every patient in harm’s way.”***

Read **CCHF**’s entire response to the HHS RFI [here](#).

**CCHF** is encouraging the public to submit comments on the proposed rule, which are being accepted on or before Monday, June 3, at <https://www.regulations.gov/document?D=HHS-ONC-2019-0002-0001>.

In a new book, Brase writes extensively about the dangers of EHRs, the privacy-stealing HIPAA rule, socialized medicine, patient privacy, health freedom and the Affordable Care Act. Find ***“Big Brother in the Exam Room: The Dangerous Truth About Electronic Health Records”*** online wherever books are sold or at [BigBrotherintheExamRoom.com](http://BigBrotherintheExamRoom.com).

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