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June 28, 2024

Katherine Ceroalo
Bureau of Program Counsel, Regulatory Affairs Unit
New York State Department of Health
Empire State Plaza, Corning Tower, Room 2438
Albany, New York 12237

Sent via email: regsqna@health.ny.gov

Re: HLT-49-23-00001-RP – Hospital cybersecurity regulations

Dear Ms. Ceroalo:

On behalf of the Healthcare Association of New York State's member nonprofit and public hospitals, nursing homes, home care agencies and other healthcare organizations, I write to comment on the above-referenced revised proposed regulation related to hospital cybersecurity program requirements.

We appreciate DOH's response to HANYS' previously submitted comments on the proposed regulation published in the Dec. 6 *State Register*, particularly the change to the 72-hour standard for reporting an incident and further alignment with national standards.

However, HANYS continues to have concerns about the revised proposed regulation and our comments that were not addressed.

Definition of "nonpublic information"

HANYS members are concerned about the continued inclusion of "nonpublic information" in the revised proposed regulation.

The revised regulation's definition of nonpublic information continues to go beyond protected health information and personally identifiable information. It would require hospitals to apply rigorous cybersecurity controls to a wide array of additional business data, which would be cost-prohibitive for many hospitals. At the very least, the definition should match existing business law for private information.

HANYS continues to recommend narrowing the definition of nonpublic information to PHI and personally identifiable information, aligning with existing state and federal regulations like the Health Insurance Portability and Accountability Act.

Third-party vendor management and controls

HANYS appreciates and agrees with DOH's response to comments related to not specifying detailed third-party vendor management requirements. However, DOH did not address our concerns with the limited vendor options and hospitals' lack of leverage with many of the most critical third-party vendors. Demanding contract terms with third-party vendors is not an option in many cases; authorities must adopt standards for these vendors.

Record retention

In its response to comments received, DOH advises that hospitals must keep logs from cybersecurity incidents that had a "materially adverse" impact on hospital operations for a six-year period. HANYS encourages DOH to clarify in the final regulation what constitutes a cybersecurity incident log.

Funding

HANYS greatly appreciates the funding streams that will be made available to support hospitals as they update their cybersecurity programs and encourages DOH to continue to ensure that adequate funding, including operational funding, is available for hospitals to update their cybersecurity programs to comply with these regulations.

Thank you for the opportunity to voice our concerns. Strengthening hospital cybersecurity is important, but regulations must strike the right balance between security, cost and patient impact. As always, we are ready to assist as needed. If you have questions, contact me at 518.431.7719 or thallise@hanys.org.

Sincerely,

A handwritten signature in black ink that reads "Thomas Hallisey". The signature is written in a cursive, flowing style.

Thomas Hallisey
Director, Digital Health Strategy