

July 31, 2023

Lina Khan
Chair, Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue NW, Suite CC-5610 (Annex H)
Washington, DC 20580

Dear Chairperson Khan,

On behalf of our 30 member companies, the HIMSS Electronic Health Record (EHR) Association appreciates the opportunity to provide feedback on the FTC's proposed updates to the Health Breach Notification Rule, Project No. P205405.

As a national trade association of EHR developers, EHR Association member companies serve the vast majority of hospital, post-acute, specialty-specific, and ambulatory healthcare providers using EHRs and other health IT across the United States. Together, we work to improve the quality and efficiency of care through the adoption and use of innovative, interoperable, and secure health information technology.

The EHR Association has long advocated for enhanced protections of sensitive health data held by actors outside of the bounds of HIPAA regulation. We strongly support the FTC's proposals to strengthen requirements for vendors of personal health records (PHRs) to provide notification in the event of a breach. The use of health apps outside of the bounds of HIPAA's regulation has grown significantly since the FTC first promulgated the Health Breach Notification Rule. Clear expectations for reporting breaches incentivize personal health records to establish information security programs and transparent policies for data under their stewardship to avoid the reputational harm of reporting a breach. Robust enforcement of these expectations is essential to ensure that apps meet these obligations and do not abuse patients' trust. The EHR Association agrees that the Commission's revised Health Care Services and Breach definitions advance those objectives.

The FTC should further strengthen its proposals by clarifying the definitions of PHR and PHR Identifiable Information. Restricting the definition of PHR to electronic records that have the technical capacity to draw information from multiple sources narrows the scope of applicability and protections for patients.

AdvancedMD	CureMD	Experity	MEDITECH, Inc.	Oracle Cerner
Allscripts	eClinicalWorks	Flatiron Health	Modernizing Medicine	PointClickCare
Altera Digital Health	Elekta	Foothold Technology	NetSmart	Sevocity
Athenahealth	eMDs – CompuGroup Medical	Greenway Health	Nextech	STI Computer Services
BestNotes	EndoSoft	MatrixCare	NextGen Healthcare	TenEleven Group
CPSI	Epic	MEDHOST	Office Practicum	Varian – A Siemens Healthineers Company

An app or other electronic record system that can draw information from a single source can hold the same quantity of sensitive health information about a patient. Narrowing the definition does not align with patients' expectations that their health information is protected regardless of who holds it. Similarly, requiring that PHR Identifiable Information be "created or received by a health care provider, health plan, employer, or health care clearinghouse" narrows the scope of applicability in a manner that would not align with patients' expectations. Identifiable health information created directly by patients and held by apps or other personal electronic record systems that meet the definition of a PHR should benefit from protections, even if it is not created or received by the entities described in the FTC's proposed definition.

We are happy to continue partnering with the FTC as it strengthens protections for individuals through robust privacy and security policies for health information. Thank you for your consideration.

Sincerely,



David J. Bucciferro
Chair, EHR Association
Foothold Technology

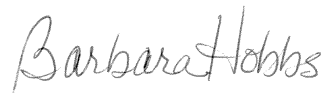


William J. Hayes, M.D., M.B.A.
Vice Chair, EHR Association
CPSI

HIMSS EHR Association Executive Committee



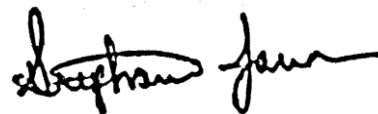
Leigh Burchell
Altera Digital Health



Barbara Hobbs
MEDITECH, Inc.



Cherie Holmes-Henry
NextGen Healthcare



Stephanie Jamison
Greenway Health



Ida Mantashi
Modernizing Medicine



Kayla Thomas
Oracle Cerner

Established in 2004, the Electronic Health Record (EHR) Association is comprised of 30 companies that supply the vast majority of EHRs to physicians' practices and hospitals across the United States. The EHR Association operates on the premise that the rapid, widespread adoption of EHRs will help improve the quality of patient care as well as the productivity and sustainability of the healthcare system as a key enabler of healthcare transformation. The EHR Association and its members are committed to supporting safe healthcare delivery, fostering continued innovation, and operating with high integrity in the market for our users and their patients and families. The EHR Association is a partner of HIMSS. For more information, visit www.ehra.org.