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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510–6250

March 4, 2016

Jocelyn Samuels
Director
Office for Civil Rights
U.S. Department of Health & Human Services
200 Independence Avenue, S.W.
Washington, D.C. 20201

Dear Director Samuels:

I am writing to obtain information regarding the efforts of the Department of Health and Human Services' Office for Civil Rights to address possible violations of the Health Insurance Portability and Accountability Act in nursing homes related to the use of social media.

A recent investigation by ProPublica revealed deeply concerning incidents where nursing home professionals posted disturbing and inappropriate photos or videos of residents on social media networks like Snapchat and Facebook.[1] The investigation identified 35 incidents, across 19 states, in which workers at these facilities shared on social media photos of residents, some of whom were not fully clothed or were suffering from dementia, documenting mistreatment. This type of abuse is unacceptable and falls short of our moral obligation to the "least of these" in our society.

Many of the individuals involved in these incidents have been prosecuted under state laws. In one of the most prominent cases in 2014, five workers in a California nursing home pled guilty to charges of elder abuse and failure to report elder abuse. In February 2015, a nursing aide in New York pled guilty to a felony charge of willful violation of health laws for taking and exchanging compromising photos of a resident. In June 2015, a nearly identical case took place in Indiana where a nursing assistant pled guilty to one count of voyeurism.

Under the federal patient privacy law known as the Health Insurance Portability and Accountability Act, your office is responsible for investigating complaints related to health information privacy to identify potential violations of the law and to take corrective action when violations have occurred. According to public reporting on ProPublica's investigation, your office had not taken any corrective action against nursing homes for violations related to social media as of December 2015.[2] The Deputy Director for Health Information Privacy in your office also indicated that if investigations were not yet pending on the cases identified by

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[1] ProPublica, "Inappropriate Social Media Posts by Nursing Home Workers, Detailed" (Dec. 21, 2015).
[2] Washington Post, "Nursing Home Workers Have Been Posting Abusive Photos of Eldery on Social Media" (Dec. 21, 2015.

ProPublica, "they would be candidates for future inquiry" and that the Office for Civil Rights should issue guidance on social media and federal patient privacy law.[3]

We all want our loved ones to receive the quality of care and attention they deserve from the professionals to whom we entrust their care. We also do not want their privacy and dignity to be put at risk because of poor oversight. In order to better understand your office's efforts to address the inappropriate use of social media in nursing homes, I ask that you please provide the following information by March 18, 2016:

1. In the past five years, has your office received any complaints regarding potential Health Insurance Portability and Accountability Act violations related to social media at nursing homes? If so, please provide the number of complaints received and resolved.

2. Of these complaints resolved, have any resulted in civil penalties or referral to the Department of Justice? If so, please provide the amount of civil penalties and number of referrals to the Department of Justice.

3. How does your office decide to conduct a compliance review of a covered entity? In the past five years, has your office initiated any compliance reviews related to the use of social media at nursing homes by covered entities? If so, please provide a list of compliance reviews initiated and a description of the nature and scope of these reviews.

4. Does your office plan to issue guidance to nursing homes on the use of social media and the Health Insurance Portability and Accountability Act? If so, what is the timeline for the completion of this guidance?

5. What are the requirements of nursing homes to address or report potential Health Insurance Portability and Accountability Act violations, including those related to social media?

6. Has your office discussed Health Insurance Portability and Accountability Act violations related to the use of social media in nursing homes with the Centers for Medicare and Medicaid Services, including any discussions regarding the proposed rule *Reform of Requirements for Long-Term Care Facilities*?

7. The Health Insurance Portability and Accountability Act requires covered entities to report breaches of unsecured protected health information. In the past five years, has your office received any reports from nursing homes related to breaches on social media? If so, please provide the number of reports received.

[redacted]

[3] *Id.*

With best personal regards, I am

Sincerely yours,

Thomas R. Carper

Thomas R. Carper
Ranking Member

cc: The Honorable Ron Johnson
Chairman