



KROKIDAS & BLUESTEIN LLP

CLIENT ALERT

HEALTH LAW CLIENT ALERT

OCR RIGHT OF ACCESS ENFORCEMENT ACTION

In March of this year, the Office of Civil Rights (“OCR”) of the U.S. Department of Health and Human Services announced its Right of Access Initiative. This initiative is aimed at enforcing the rights of patients to receive copies of their medical records promptly and at a reasonable cost. Recently, OCR announced the first enforcement action and settlement under this initiative.

In the settlement, Bayfront Health St. Petersburg (“Bayfront”), a Level II trauma and tertiary care center licensed as a 480-bed hospital, agreed to pay \$85,000 to OCR and adopt a corrective action plan to settle an alleged violation of the Health Insurance Portability and Accountability Act’s (“HIPAA”) right to access provision. That provision generally requires a covered entity to act on a patient’s request for access to inspect or obtain a copy of his, her or their medical records within thirty (30) days. This requirement also applies to a parent’s request for access to a minor child’s medical records.

The underlying OCR investigation was in response to a complaint from a mother who asserted that she was not granted timely access to the medical records of her unborn child despite having submitted a written request to Bayfront almost ten (10) months prior to her complaint. The mother requested fetal heart monitor records in October of 2017, but Bayfront replied that the records were not found. The mother subsequently requested the records through her counsel in both January and February of 2018. Bayfront provided an incomplete set of records to the mother’s counsel in March 2018, and only provided a complete response to the mother’s counsel in August 2018 after the mother had filed her complaint with OCR.

This investigation was resolved by the OCR Regional Manager for the New England Region and is a compelling reminder for health care entities to be aware of processes and policies related to HIPAA and its access provisions. In particular, health care entities must be attentive to tracking all requests and ensuring timely and complete responses to

such requests. The Bayfront settlement is the first enforcement action under the Right of Access Initiative, a program that will surely continue to be an area of focus for OCR.

The full resolution agreement and corrective action plan can be accessed [here](#).

Please contact a member of the Krokidas & Bluestein health care team with any questions by calling our office at 617-482-7211.