

August 20, 2020

The Honorable Joseph J. Simons
Commissioner
Federal Trade Commission
Office of the Secretary
600 Pennsylvania Avenue, N.W.
Suite CC-5610 (Annex B)
Washington, DC 20580

**Re: Federal Trade Commission, Health Breach Notification Rule, 16 CFR part 318,
Project no. P205405**

Dear Commissioner Simons:

On behalf of the American Dental Association (ADA) and our more than 163,000 dentist members nationwide, we appreciate the opportunity to comment on the proposed rule for the Health Breach Notification Rule. Specifically, the ADA's comments focus on conflicts between the rule and state, local, or other federal laws and regulations.

The Federal Trade Commission's (FTC) proposed rule acknowledges that it does not apply to health information secured through technologies specified by the Department of Health and Human Services (HHS) and it does not apply to businesses or organizations covered by the Health Insurance Portability and Accountability Act (HIPAA). The FTC further states that HIPAA-covered entities and their business associates must instead comply with HHS's breach notification rule. In order to prevent unnecessary confusion in notification requirements, the ADA strongly recommends that the FTC and HHS work closely together to assess the extent to which vendors of personal health records (PHR), PHR-related entities, and third party service providers may be HIPAA-covered entities or business associates of HIPAA-covered entities. In addition, the FTC and HHS should ensure that the breach notification requirements are effective but are not overly burdensome or costly to implement and follow. Coordination between the FTC and HHS to come up with the requirements is essential in order to avoid circumstances in which consumers (i.e., patients) may receive multiple, duplicative breach notices over the same incident. Moreover, overly burdensome, costly requirements may act as a disincentive for widespread PHR and electronic health records adoption and use.

Another significant concern of the ADA is the impact of state laws and regulations that may overlap with these proposed requirements. Overlapping and conflicting laws and regulations risk leading to confusion on the part of dentists as well as their patients. This confusion may grow even greater when a federal regulation, such as those proposed here by the FTC, overlaps with several states that may be served by an entity. With the potential for electronic PHRs to be operated by a vendor across several states, this problem is exacerbated. Data breaches often require entities to comply with multiple laws which may not be consistent,

August 20, 2020
Page 2

and ensuring consistency could help affected individuals receive timely, meaningful, and consistent notification and help ease the compliance burden on entities. The ADA recommends that the FTC work to eliminate the potential lack of conformity and overlapping requirements that could lead to burdens on regulated entities as well as confusion and worry for patients.

Thank you again for the opportunity to comment on revisions to the FTC Health Breach Notification Rule. We look forward to continuing to work with the FTC, and would welcome the opportunity to speak with you in more detail and answer any questions you have regarding these comments. Please contact Dr. Robert Mitton, ADA manager of legislative and regulatory policy, at 202-789-5175 or mittonr@ada.org to facilitate further discussions.

Sincerely,

Chad P. Gehani, D.D.S.
President

Kathleen T. O'Loughlin, D.M.D., M.P.H.
Executive Director

CPG:KTO:rm