



June 12, 2024

Melanie Fontes Rainer  
Director  
Office for Civil Rights  
Department of Health and Human Services  
Room 509F, HHH Building  
200 Independence Avenue, SW  
Washington, DC 20201

**Re: Change Healthcare and Breach Notifications**

Dear Director Rainer:

Thank you for your letter of May 31, 2024. MGMA and its members appreciate the priority that your office has placed on the Change Healthcare matter, and your clear statement that practices as covered entities under HIPAA may delegate responsibility for breach notifications, if and when required, to Change or its parent, UnitedHealth Group.

At the same time, we remain deeply troubled by the statement in your letter — also reflected in your office’s updated FAQ of May 31 — that even with such delegation, covered entities like MGMA members **remain responsible for ensuring** that Change/United provide breach notifications to the government, patients, and the media in compliance with the HIPAA and HITECH statutes. To make thousands of individual providers guarantors of Change/United’s compliance is neither reasonable nor practical, especially in these unique circumstances. It also undermines the supposed advantage of making Change/United primarily responsible.

Providers were not the source of these disclosures. They do not know the extent and scope of them. They have neither the resources, nor the access to underlying information surrounding the disclosures which would be necessary to investigate them. As a result, they have no realistic choice but to rely on Change/United to make the appropriate breach notifications. Only the federal government has the resources to ensure that Change/United does so in a fully compliant manner.

Treating this unprecedented systemic data breach as simply a bundle of garden variety transactions between providers and their business associates misses the mark. In enacting HIPAA in 1996 and HITECH in 2009, Congress could not possibly have foreseen an industry-wide event of this significance. Thus, we again respectfully urge OCR — whether using its enforcement discretion or otherwise — to issue clear guidance that:

- Change/United is fully and solely responsible for all HIPAA breach notification requirements,
- No action needs to be taken by providers to ensure Change/United fulfill these obligations, and
- Providers are protected from regulatory scrutiny in connection with breach notifications rightfully performed by Change/United.

Given the importance and immediacy of this concern to our members, I would appreciate an opportunity to discuss this with you in person at your earliest opportunity. I may be reached at [agilberg@mgma.org](mailto:agilberg@mgma.org) or 202-293-3450 to schedule such a meeting.

Sincerely,

/s/

Anders Gilberg  
Senior Vice President, Government Affairs

CC: Timothy Noonan  
Deputy Director for Health Information Privacy,  
Data and Cybersecurity