HCAF
Home Care Association of Florida
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September 22, 2025

Kimberly R. Smoak
Deputy Secretary, Division of Health Quality Assurance
Agency for Health Care Administration
2727 Mahan Drive, Mail Stop #2
Tallahassee, FL 32308

Re: Proposed Rule 59A-35.112 – Data Breach Transparency

Dear Deputy Secretary Smoak:

On behalf of the Home Care Association of Florida (HCAF), the leading voice for the state's more than 2,300 licensed home health agencies, thank you for the opportunity to provide feedback on the proposed creation of Rule 59A-35.112 regarding data breach transparency requirements. HCAF advocates for policies that ensure high-quality, accessible, and sustainable care in the home, while offering education, resources, and regulatory guidance to strengthen Florida's home care provider community and workforce.

We appreciate the Agency for Health Care Administration's (AHCA) efforts to safeguard patient data and uphold public trust in Florida's health care system. However, we have serious concerns regarding the operational feasibility of several provisions in the proposed rule — particularly for small- and mid-sized home health providers.

CONCERNS ABOUT THE 24-HOUR REPORTING REQUIREMENT

The proposed rule would require providers to report an "information technology (IT) incident" to AHCA within 24 hours of reasonably believing one may have occurred. While we support the goal of timely reporting, this threshold is unrealistic for many home health agencies. For these reasons, the proposed 24-hour requirement is impractical:

- **Resource Limitations:** Many agencies — especially smaller, independent providers — lack 24/7 dedicated IT staff. Confirming whether an incident constitutes unauthorized access often requires outside vendor assistance, which cannot be secured and resolved within such a narrow timeframe.
- **Risk of Over-Reporting:** The "reasonable belief" standard, when combined with a 24-hour timeline, may compel agencies to report unverified or incomplete information. This creates unnecessary administrative burden for both providers and AHCA.
- **Operational Disruption:** Agencies without robust IT infrastructure will be disproportionately affected, forcing them to divert resources away from patient care.

OUT OF STEP WITH FEDERAL AND STATE LAW AND PEER STATES

The proposed 24-hour requirement is far more stringent than federal law, Florida law, and standards in other states with comparable demographics and aging populations:

- **Health Insurance Portability and Accountability Act (HIPAA):** The HIPAA Breach Notification Rule requires covered entities to notify affected individuals, the U.S. Department of Health and Human Services (HHS), and in some cases the media, without unreasonable delay and no later than 60 days after discovery of a confirmed breach. HIPAA only requires reporting once a breach has been confirmed, not merely suspected. This allows time for investigation and forensics before issuing a report.
- **Florida Information Protection Act (FIPA):** State law already requires businesses and governmental entities to notify affected individuals and the Department of Legal Affairs within 30 days of discovery of a confirmed breach.

Aligning the rule with FIPA would ensure consistency across state law, avoid duplicative and conflicting timelines, and leverage a framework that regulators and providers already understand.

- **Peer States:** States with similar demographics provide more practical timelines, such as 30 days from discovery of a confirmed breach in New York and Washington, 45 days in Ohio, 60 days in Texas and Georgia, and "without unreasonable delay" in Pennsylvania, allowing time to confirm a breach before initiating the notice process.

The proposed "24 hours from suspicion" standard is a significant outlier and imposes an unusually high compliance burden without meaningful benefit to patient protection.

CLARIFICATION OF REPORTING TRIGGERS

The draft rule defines an "information technology incident" broadly as any observable occurrence permitting or caused by unauthorized access of data. Providers may not immediately know if an incident rises to the level of a breach. Without clarification, agencies could face conflicting obligations under state and federal law. Clearer guidance should:

- Differentiate between routine system disruptions (e.g., service outages) and confirmed breaches of sensitive data.
- Align the reporting trigger with HIPAA's definition of a confirmed breach, and adopt FIPA's 30-day timeline to maintain consistency across Florida law.

CONTINUITY PLAN REQUIREMENTS

The requirement for a written continuity plan with secure on-site and off-site data backups is a reasonable safeguard. However, compliance will require significant investments in IT infrastructure. We urge AHCA to provide flexibility, technical assistance, and a reasonable phase-in period for providers to achieve compliance.

RECOMMENDATIONS

To ensure this rule strengthens rather than undermines provider capacity, HCAF respectfully recommends:

1. Align the reporting timeline with FIPA — 30 days from discovery of a confirmed breach.
2. Clarify the definition of "information technology incident" to prevent over-reporting of routine or unverified events.
3. Offer flexibility and support for small and mid-sized providers in developing continuity plans and backup systems.
4. Pilot test the reporting system with a representative group of providers before full implementation.

CONCLUSION

Florida's home health provider community is committed to protecting patient information, but regulatory requirements must be workable in practice. As drafted, the proposed rule risks placing Florida outside the federal and state mainstream, creating compliance obligations that many providers cannot realistically meet.

We urge AHCA to adopt standards that align with FIPA, balance transparency and accountability with the realities of provider operations and ensure both the protection of patient data and the long-term stability of in-home care.

Thank you for your consideration of our comments, for your thoughtful review of this important issue, and for your continued commitment to protecting Florida's patients, providers, and health care delivery system.

Respectfully submitted,

Denise Bellville

Denise Bellville, RN
Executive Director