

# ARRA in Flux: Healthcare Industry Awaits Rules on Several ARRA Provisions

Save to myBoK

By Dan Rode, MBA, CHPS, FHFMA

The series of snow storms that hit Washington, DC, in February shut down Congress and the federal government for several days. The storms only added to delays that have kept the healthcare industry in a state of flux, awaiting several rules from provisions in the American Recovery and Reinvestment Act (ARRA).

## Privacy Rules Delayed

At press time, the healthcare industry was still awaiting a notice of proposed rulemaking (NPRM) on HITECH changes to the HIPAA privacy rule, including changes to contracts with business associates, restrictions on disclosure, breach notifications, and marketing and fund raising, which went into effect February 18 (for more, see the January “ARRA on the Job” column, “HIPAA, Too”).

While the Office for Civil Rights (OCR) is not able to say when the NPRM will be released, staff have told AHIMA that there will be no enforcement of the February 18 sections until there is a rule in place.

Once an NPRM is published in the *Federal Register*, the public will have 60 days to comment. Normally a final rule is published several months after the comment period closes, depending on the volume and complexity of the comments. Compliance with the rule would then be required in 30 to 60 days.

## Breach Reports, First Chief Privacy Officer Announced

Healthcare organizations must now comply with the breach notification provisions outlined in ARRA. The breach provisions originally went into effect in September 2009, but OCR granted a grace period for compliance with the provisions until February 22.

Under the ARRA breach notification provisions, HIPAA covered entities and their business associates must notify HHS of any breaches affecting the unsecured protected health information of 500 or more people. The notification must be made without unreasonable delay and no later than 60 days from the discovery of the breach. On February 23 OCR released basic information on the 36 large-scale privacy breaches HIPAA covered entities reported in the last months of 2009 and early 2010.

OCR reiterated the need for covered entities to report breaches affecting fewer than 500 people for the same period by March 1.

In late February the Office of the National Coordinator for Health Information Technology (ONC) announced the appointment of its first chief privacy officer, Joy Pritts, JD. Pritts will advise ONC and its advisory groups on forming policies on privacy, security, and data stewardship of electronic health information.

## Meaningful Use Privacy Provisions

The “meaningful use” NPRM was the source of considerable work, debate, and analysis within Washington, DC, and across the nation for most of January and February. Comments were due on March 15 and are now being reviewed.

One item that received limited debate is the application of the HIPAA privacy and security requirements, both the original and the modifications introduced in ARRA. Concern has arisen in some quarters that many organizations have not maintained their

vigilance on the privacy and security requirements, which should be regularly reviewed as organizations adopt new forms of electronic records and communications.

News reports of breaches in healthcare entities keep this concern alive. There is pressure for OCR to audit more covered entities and take steps to ensure the new enforcement and breach rules are used.

## Certification and Accounting for Disclosures

While many turned their attention to the meaningful use rule, others were examining ONC's interim final rule (IFR) for certification standards, effective February 12.

The rule sets the certification criteria for electronic health records (EHRs), which is a necessary requirement for providers to qualify for the meaningful use incentive program. Comments on the IFR were also due March 15. ONC is reviewing comments prior to issuing a final rule.

On March 10 ONC published a separate NPRM describing the process by which organizations will apply to become certifying bodies. In order to get the program running as quickly as possible, the NPRM proposes a short-term certification process that will serve until a permanent program makes its way through the rulemaking process. ONC expects the temporary program to run through 2011.

Included in the standards IFR was a standard for accounting for disclosures, as called for under HITECH. While the standard itself is simple, calling for just four data elements to be collected, the application of the standard to an organization's systems appears daunting, and even ONC raised doubts in its comments as to how it will be applied.

Under HITECH, the HHS secretary must propose a rule for the accounting within six months of the standard being adopted, so expect to see or at least hear a lot more about accounting for disclosures come August.

AHIMA's comments on the meaningful use NPRM and the certification standards and accounting for disclosures IFR can be found at [www.ahima.org/arra](http://www.ahima.org/arra).

## HITECH Grants-Workforce and Education

HHS also announced a series of grant programs to assist in the implementation of EHRs, including:

- **The Beacon Community Cooperative Agreement Program**, which is designed to provide funding to communities to "build and strengthen" their health IT infrastructure and exchange capabilities and allow them to be used as demonstrations and learning tools for other communities.
- **The Community College Consortia to Educate Health IT Professionals in Health Care Program**, which is designed to "rapidly create" or expand health IT (and essentially HIM) education and training programs at community colleges. Community colleges funded under this initiative will establish intensive, nondegree training programs that can be completed in six months or less.
- **Information Technology Professionals in Health Care: Program of Assistance for University-Based Training**, which is designed to rapidly increase the availability of individuals qualified to serve in specific health information professional roles requiring university-level training.
- **The Curriculum Development Centers Program**, a grant program to institutions of higher education or consortia to support health IT curriculum development.
- **The Competency Examination for Individuals Completing Nondegree Training Program**, which provides a grant to support the development and initial administration of a set of health IT competency examinations.
- **The Strategic Health IT Advanced Research Projects Program** to fund research focused on achieving "breakthrough advances" to address problems that have impeded adoption of EHRs, including security, patient-centered cognitive support, healthcare application and network platform architectures, and secondary use of EHR data.
- **The Health Information Technology Extension Program** to provide technical assistance, guidance, and information on best practices to support and accelerate healthcare providers' efforts to become meaningful users. Thirty-two regional extension centers were named in February, and additional centers should be named by the end of April.

All of these programs offer opportunities for HIM professionals, either directly or indirectly. AHIMA has supported a number of groups seeking these grants and will work with awardees, as will several state HIM associations.

Considerable work has been done since last spring to ensure that all parties involved understand the need for HIM expertise and training in academic and other training programs.

Those interested in any of these programs should visit the ONC Web site at [www.healthit.hhs.gov](http://www.healthit.hhs.gov). Obviously, a number of these programs will be seeking HIM expertise from those interested in getting involved.

## ICD-10-CM/PCS State Medicaid Program

At this year's Winter Team Talks, AHIMA announced a new joint advocacy project related to the implementation of ICD-10-CM/PCS in state Medicaid agencies. The goal of the project is to ensure that state Medicaid agencies successfully transition to the new classification systems by October 1, 2013, including annual updates.

Medicaid agencies have been notoriously behind in using the most current classification systems, so state HIM associations will provide education on the systems to assist their Medicaid agencies implement the classifications. Assistance will include testing and training.

State HIM associations will work with AHIMA to support this effort, which will benefit both Medicaid agencies and providers. State leaders will work with AHIMA over the spring and summer to begin the project, which is expected to last over the course of the ICD-10 implementation. This is a wonderful opportunity for HIM professionals to ensure ICD-10 is implemented correctly in their states.

Dan Rode ([dan.rode@ahima.org](mailto:dan.rode@ahima.org)) is AHIMA's vice president of policy and government relations.

---

**Article citation:**

Rode, Dan. "ARRA in Flux: Healthcare Industry Awaits Rules on Several ARRA Provisions"  
*Journal of AHIMA* 81, no.4 (April 2010): 16-18.

---

Driving the Power of Knowledge

Copyright 2022 by The American Health Information Management Association. All Rights Reserved.