

ARRA's Impact on HIM

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This month marks the first anniversary of the signing of the American Recovery and Reinvestment Act (ARRA). A substantial portion of the Health Information Technology for Economic and Clinical Health (HITECH) Act within it allocates funds for nationwide health information exchange and health information use.

As a result of this legislation, the Congressional Budget Office estimates that approximately 90 percent of doctors and 70 percent of hospitals will use comprehensive electronic health records (EHRs) within the next decade.¹

With the tremendous projected growth of EHR systems and the associated strengthening of HIPAA privacy requirements, the responsibilities of HIM departments will expand and change.

This article provides an overview of HITECH's impact, from "plugging holes" in HIPAA to increasing the rate of health information exchange, as well as how these changes will affect the HIM profession.

Proliferation of EHRs

Many providers are expediting their search for an EHR solution in hopes of obtaining maximum stimulus dollars through early qualification. A notice of proposed rulemaking published last month set forth draft criteria for the federal EHR incentive program. Because of the tremendous impact of the EHR on HIM workflow, it is vital that HIM professionals assert their department's requirements.

Further, HIM departments should prepare for vast changes to their domain, including a decrease in traditional functions such as filing, analysis, and chart location; a change in functions such as scanning; and consideration of new applications such as computer-assisted coding.

Increased Health Information Exchange

HIM professionals understand how patient data are collected and used. As a precursor to the implementation of EHRs and participation in HIE initiatives, it is vital that MPI accuracy is assessed and appropriate actions are taken to facilitate accurate patient identification and record linkages. This will expedite the sharing of information for patient care purposes.

Further, HIM departments should ensure they have defined HIM policies and procedures across organizational and geographic boundaries.

Accounting of Disclosures

Under HITECH, if a covered entity uses or maintains an EHR, individuals will have a new right to receive an accounting of disclosures for treatment, payment, and operations of their protected health information (PHI) made during the three-year period prior to the request.

This change will have a tremendous impact on HIM departments in that many disclosures are made by clinicians and are not formally documented. In order to avoid gaps in the recording of disclosures, all releases and the associated accounting of these disclosures should be centralized in the HIM department. This will require support 24 hours a day, seven days a week, and will increase the demand for HIM oversight.

Security Breach Notification

HITECH provisions require that covered entities and their business associates notify individuals whose unsecured PHI has been-or is reasonably believed to have been-accessed, acquired, or disclosed as a result of a privacy or security breach.

Breach identification and documentation may not always fall under the charge of HIM departments, but it is a logical extension of responsibilities.

As the traditional custodian of the medical record, the HIM professional owns the responsibility for release of information and privacy for the medical record. HIM professionals are familiar with tools for tracking releases, including the accounting of disclosures and the audit trail.

HIM departments that take on these duties should prepare to track, monitor, and notify individuals of breaches and provide access to comprehensive, accurate, and useable audit trails.

Limited Data Set

Under the HITECH Act, an individual may request a covered entity withhold release of PHI to a health plan for payment or healthcare operations if the individual has paid for the service out of pocket in full. The covered entity must comply.

This is a change to the HIPAA rule, which permitted the covered entity to deny restrictions requested by an individual. While the concept of minimum necessary remains an alternative, the new law encourages reliance on the limited data set and a method of segregating relevant portions of PHI.

HITECH requires covered entities to comply with HIPAA when they limit the PHI used, disclosed, or requested to the limited data set as defined by the privacy rule or to the minimum necessary to accomplish the intended purpose. Further guidance on limited disclosure is expected from the Office for Civil Rights.

HIM departments must be prepared to interpret and follow the guidelines and create and release a more labor-intensive limited data set.

Restricted Disclosure

Because the restrictions on disclosure of information described above are mandatory, this provision will add to the administrative burdens of HIM departments with integrated records used for treatment and billing purposes.

Health information made available to payers may have to be segregated from information used for patient care. It will be necessary to plan for alternative scenarios. For example, a patient may agree to pay out of pocket for an initial test or treatment and then later seek care for the same or related conditions. If the patient requests that subsequent treatments be billed to the patient's insurer, the insurer may lack the information needed to determine medical necessity without release of the original restricted information.

HIM departments will have to closely monitor billing and release of information to ensure that restrictions are tracked and honored, as well as develop processes to segregate health information for payment from health information for patient care.

Individual Electronic Access

HITECH grants patients the right to obtain copies of their PHI in electronic format from covered entities that use or maintain EHRs. Facilities will need to not only support this request, which their existing systems may not currently support, but they must also manage questions on formatting and password encryption of the data.

HIM professionals should consider whether patient health information should be converted to noneditable formats prior to release. They must also provide means for disclosure to patients via patient portals, USB devices, or CDs.

These changes will take effect over several years. Many of the regulations necessary to implement the provisions have yet to be published; many are due this month, others are due in August. The table below lists individual HITECH provisions and their published implementation dates.

Recent and Upcoming ARRA Implementation Dates

Issue, Section, and Responsible Agencies	Published Implementation Date
Noncompliance penalties take effect on breach notification for covered entities (§ 13402, HHS)	February 22, 2010 (interim final rule in effect from September 23, 2009)
Regulations on criteria for certified EHRs take effect (§ 4102, CMS; separate regulation establishing certification process expected February, 2010)	February 12, 2010 (interim final rule published January 13, 2010)
Issue regulations to implement revised penalty structure (§ 13401, OCR with CMS)	February 18, 2010 (interim final rule in effect from November 30, 2009)
Issue regulations to extend certain HIPAA privacy rule provisions to business associates (§ 13404, OCR)	February 18, 2010
Issue regulations regarding right to request restrictions, minimum necessary, access (§ 13405, OCR)	February 18, 2010
Issue regulations to clarify that certain entities are HIPAA business associates (§ 13408, OCR)	February 18, 2010
Issue guidance on requirements for de-identification of PHI (§ 13424, OCR with ONC)	February 18, 2010
Report on best practices for treatment disclosures (§ 13424, OCR)	February 18, 2010
Issue regulations to define “meaningful use” (§4102)	Mid-2010 (notice of proposed rulemaking published January 13, 2010)
Issue guidance on “minimum necessary” health information (data) under HIPAA (§ 13405, OCR)	August 18, 2010
Issue regulations to prohibit exchanging of health information for remuneration without authorization (§ 13405, OCR)	August 18, 2010

Issue regulations to implement willful neglect provisions (§ 13410, OCR with CMS)	August 18, 2010
Deadline to comply with new accounting of disclosure rules for information kept in EHRs acquired after January 1, 2009 (§ 13405, OCR)	January 1, 2011
Deadline to comply with new accounting and disclosure rules for information kept in EHRs acquired before January 1, 2009 (§ 13405, OCR)	January 1, 2014
CMS: Centers for Medicare and Medicaid Services; HHS: Department of Health and Human Services; OCR: Office for Civil Rights; ONC: Office of the National Coordinator for Health Information Technology	
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Note

1. Committee on Ways and Means. "Title IV-Health Information Technology for Economic and Clinical Health Act." Available online at <http://waysandmeans.house.gov/media/pdf/110/hit2.pdf>.

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Article citation:

Cassidy, Bonnie S.; King, Elaine; Wheatley, Victoria. "ARRA's Impact on HIM" *Journal of AHIMA* 81, no.2 (February 2010): 48-49;56.

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