

# Checking In on Accounting of Disclosures

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Accounting of disclosures (AOD) is one "patient right" listed within the HIPAA Privacy Rule. Since the rules were implemented in 2003, AOD has been a topic of much discussion but has not generated much regulatory action from the US Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) or from patients requesting fulfillment of this right. Few facilities receive these types of requests, and many patients aren't aware they have this right or what to expect from a request.

Under the original HIPAA Privacy Rule an individual has the right to receive an accounting of disclosures on protected health information (PHI) created by a covered entity up to six years prior to the date of the requested disclosure. There tends to be confusion within HIPAA-covered entities and their business associates about what must be listed in an AOD report with relation to a patient's PHI designated record set. The HIPAA rule changes proposed by the 2009 HITECH Act, which propose a major modification to AOD, has only further complicated individual's interpretations of the law.

This article outlines common accounting of disclosure guidance that can be used by all HIPAA-covered entities, as well as an update on potential AOD requirement changes in the works as of press time. The guidance provided in this article is not exhaustive. In reality, there are many more examples that may or may not be listed depending on the type and nature of disclosures made by an organization.

## Accounting of Disclosures Requirements

Though exceptions apply, disclosures typically included in response to an AOD request include:

- All disclosures of PHI that are not for treatment, payment, or delivery of healthcare operations
- Suspected domestic and child violence and abuse reporting
- Disclosures made for research unless authorized by the patient or legal representative
- Disclosures made to government agencies (excluding intelligence/national security)
- Disclosures to public health authorities
- Disclosures to the Food and Drug Administration
- Disclosures to employers
- Disclosures to health oversight agencies
- Vital statistics reporting
- Disclosures to law enforcement
- Disclosures regarding deceased persons
- Disclosures for research purposes
- Disclosures for specialized government functions
- Disclosures for workers' compensation purposes

When giving an accounting of disclosures report, the covered entity must provide the individual with a written accounting that includes:

- Date of the disclosure
- Name of the entity who received the PHI and, if known, the address of such entity
- Brief description of the PHI disclosed
- Brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure

## Accounting of Disclosure Exemptions

In the original, and still current, Privacy Rule, the basis for requesting an AOD report was based upon a less than clear disclosures exclusion list.

Reasons for a disclosure that can be excluded from an AOD report include:

- To carry out treatment, payment, and healthcare operations
- Information sent to individuals regarding their own PHI
- Incident to a use or disclosure otherwise permitted or required
- Pursuant to an authorization
- For the facility's directory or to persons involved in the individual's care or other notification purposes
- For national security or intelligence purposes
- Sent to correctional institutions or law enforcement officials
- As part of a limited data set
- Occurring prior to the compliance date for the covered entity

Researchers performing clinical studies do not have to account for disclosures during a study if the:

- Disclosure was made pursuant to a patient authorization
- Disclosure applies to a limited data set
- Disclosure applies to de-identified information

In addition, studies have been determined by the Institutional Review Board to be exempt under the Common Rule, because the existing information being recorded cannot be identified either directly or through identifiers linked to subjects. However, an accounting of disclosures must include disclosures made in connection with a Institutional Review Board-approved waiver of authorization.

## **Business Associate Disclosure Changes**

Under the HITECH Act Omnibus HIPAA Privacy Final Rule, a business associate is required to prepare an AOD report for disclosures they make upon patient request in accordance with the required terms of their business associate agreement with the covered entity. Business associate sub-contractors would also have this requirement should their scope include these types of disclosures.

The covered entity must act on the individual's request for an accounting no later than 60 days after receipt of the request, with one 30 day extension allowed if communicated to the patient.

Additionally, the covered entity must provide the first accounting to an individual in any 12-month period without charge. The covered entity may impose a reasonable, cost-based fee for each subsequent request for an accounting by the same individual within the 12-month period, provided that the covered entity informs the individual in advance of the fee and provides the individual with an opportunity to withdraw or modify the request for a subsequent accounting in order to avoid or reduce the fee.

## **HITECH Changes to AOD Pending**

The HITECH Act listed changes to accounting of disclosures to better respond to comments on the HITECH proposed rule. Commenters have long held the opinion that AOD is difficult to use and misunderstood by patients due to its complexity.

The purpose of these modifications is, in part, to implement the statutory requirement under the HITECH Act to require covered entities and business associates to account for disclosures of protected health information made in order to carry out treatment, payment, and healthcare operations if such disclosures are through an electronic health record (EHR).

In order to balance burdensome provider rules with a patient's right to be informed of who is accessing their health record and which parts of their PHI were accessed, used, or disclosed, HHS created a notice of proposed rulemaking (NPRM) on May 31, 2011, to solicit comments from the public and healthcare industry. Many organizations responded, including AHIMA. HHS has not issued any additional rules as of press time. This topic was not mentioned in the Omnibus Privacy Final Rule and

remains perhaps the last major HIPAA modification area not yet addressed. AOD tracking by certified EHR vendors has not been mandated, and the few criteria that have been circulated so far are listed as "optional."

To date, the only requirement is for covered entities to continue to provide accountings of disclosures as required by the original 2003 HIPAA rules. While it is prudent to understand the thoughts of EHR vendors on the AOD subject, the rules and criteria for AOD continue to lack total clarity even for system developers.

Covered entities should obtain assurance from both current and prospective EHR vendors that systems will be able to meet the new requirements when they are released. No date has been given for when new rules may be issued or whether there will be another NPRM, or an interim or final rule. As of press time, the HITECH mandate still stands as the official guidance.

## Bottom Line: Follow Original Requirements

Organizations should continue to follow the original AOD requirements, unchanged since the April 2003 HIPAA compliance date, until a further rulemaking is released. The proposed rules issued in May 2011 have no legal or operational impact. The decision to provide an accounting of the access, use, and disclosure of PHI for treatment, payment, and healthcare operations has not yet become a requirement.

When evaluating record technologies, such as an EHR system, it may be helpful to keep a potential access report in mind as EHR audit log capabilities are reviewed. Audit reports are important because it is possible that these reports will need to be released to patients in the near term.

## References

AHIMA. "[Analysis of Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules.](#)" January 25, 2013.

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Health Insurance Portability and Accountability Act of 1996. Public Law 104-191. 45 CFR §164.528. <http://www.gpo.gov/fdsys/pkg/CFR-2011-title45-voll/xml/CFR-2011-title45-voll-sec164-528.xml>.

### Read More Online

For a list of disclosure types that typically are included on an accounting of disclosures report, visit [journal.ahima.org](http://journal.ahima.org) (beginning November 1).

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