Keeping HITECH in Context: Flurry of Regulation Fits within a Larger, More Familiar Picture

By Dan Rode, MBA, CHPS, FHFMA

The healthcare industry and HIM profession have spent much of 2010 engaged in proposed regulations, comments, and final regulations related to the Patient Protection and Affordable Care Act and HITECH Act. There will be more to come. We have adapted to new Recovery Audit Contractor (RAC) requirements and other changes for healthcare providers and health plans.

At times it has been hard to see the forest for the trees. In order to move forward, the healthcare industry must remember the context in which these regulations are being published.

Privacy and Security

The HITECH modifications to HIPAA have generated a renewed focus on the existing privacy and security rules and surfaced the confusion that still exists over current requirements on items such as patient access to records, presentation of the notice of privacy practices, and authorization for release of information.

HIPAA requires that a covered entity provide individuals access to their protected health information (PHI) in any medium and in all but a few cases. The HITECH rules are specific to electronic PHI. Individuals still have the right to request an amendment to their records in any medium, and providers still have the right to accept or reject requested amendments.

HITECH requires the federal government to provide guidance on the HIPAA concept of "minimum necessary," another area where confusion exists. Many in healthcare do not clearly understand the existing requirement and how it applies to both internal access and external requests for information.

Minimum necessary protects individuals against inappropriate access to their PHI, with the covered entity acting as the guardian of their records and the authority on the minimum PHI required to meet the request.

The HITECH modifications take minimum necessary one step further by permitting the patient to restrict some information from disclosure to health plans. This right is reserved to instances where the individual pays for services or items out of pocket.

Just how this requirement will be stated in the final rule remains to be seen, but covered entities must examine their existing practices and then determine what new practices they will need to fulfill such requests when the rule is released.

While covered entities often discuss privacy with their patients, organizations should not forget the potential issues associated with chart audits such as RAC audits and other access to PHI that may involve third parties.

Those in hospitals may need to work closely with various clinical practices that use PHI for billing and other reporting requirements. Organizations should approach this task now since the HITECH requirements must be implemented in six months and many covered entities are working now on their electronic health record (EHR) systems to apply for meaningful use incentives.

Covered entities should also conduct security assessments for the various systems that handle PHI to ensure they are up to date. Each system change associated with PHI requires a security assessment and should occur as EHRs are tweaked or acquired for participation in the meaningful use EHR incentive program or regular business.

EHR systems will also require means to meet the new privacy rule modifications. Perhaps the most significant example is a system of holds to ensure that certain PHI is not sent to a health plan or intermediary when the individual has requested a restriction.

Depending on how this requirement takes shape in final regulation, organizations will have to determine when, where, and how this information will be flagged as the patient progresses through inpatient, ambulatory, or emergency systems, as well as how such data segregation will be handled in the future to avoid release through subsequent encounters.

It is clear that some of the answers to system questions cannot be easily answered now, but none of these questions can be ignored, and dialogue needs to be happening among clinicians, HIM professionals, information services, and vendors. HIM professionals must begin this dialogue in instances where discussion has yet to begin with IT departments and systems vendors.

Legal EHR

All this focus on new system functionality and certification should not distract organizations from ensuring their system's comprehensive ability to provide the information needed for business and legal requirements, often called the legal EHR.

In August, AHIMA's third Legal EHR Summit provided insight on this issue, and presenters urged attendees to clearly define their legal records for their facilities to ensure their ability to provide acceptable and undisputable information for a variety of requests from patients, trading partners, and the courts.

Data Reporting

The new HITECH requirements call for providers to produce a variety of reports. While the stage 1 meaningful use requirements reduced some of the reporting from earlier proposals, it is clear that a number of quality measurement and user reports will be due electronically in 2012. These requirements do not replace existing reporting requirements to third parties, whether health plans or other government agencies.

In addition, HIM professionals need to be on the lookout for new reporting requirements on a state and local basis from health information exchanges, whose development is being accelerated through HITECH. These requirements could involve public health and other administrative reporting mandates.

Expect Conflict

The healthcare industry is full of internal and external players, and HIM professionals should expect conflict in the near future as these players work through the HITECH requirements. RAC audits are one example where access to information may be a challenge given conflicting requirements. Regional extension centers and health information exchange organizations are another where perspectives may differ due to the differing knowledge and experience of the stakeholders.

HIM professionals should expect to see plenty of frequently asked questions on the Centers for Medicare and Medicaid Services', Office for Civil Rights', and Office of the National Coordinator for Health IT's Web sites. They should also be aware that rules, regulations, and contract changes will be continually forthcoming and must be applied with all of the other requirements above in mind.

Several bills pending in Congress would alter HITECH and reform legislation, potentially relieving some of the burden. However, this is an election year, and it is unlikely they will progress. While there are many promises and declarations, the ability and perhaps desire of Congress to make such change is limited, even in a lame-duck session after the election. Tweaks may be forthcoming, but major change to legislation is unlikely in the near future.

For HIM professionals, the challenge and the opportunity comes in helping our organizations and the industry make sense of the old and new regulations and navigate through tumultuous times.

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

Article citation:
Rode, Dan. "Keeping HITECH in Context: Flurry of Regulation Fits within a Larger, More Familiar Picture" *Journal of AHIMA* 81, no.10 (October 2010): 18-20.