Pacing the ARRA Changes: Tackling the ARRA Rules and Regulations as They Come

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By Meg Featheringham

Through the winter and spring healthcare waited for the next round of ARRA-related regulations. Now they are here, and organizations are tagged with implementing compliant programs.
How do you get started when it seems that everything needs doing at once?

Over the past year and a half, healthcare organizations have faced a steady stream of new rules and regulations stemming from the American Recovery and Reinvestment Act (ARRA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act. They have been challenged with interpreting and implementing the various regulations, especially the privacy and security amendments to HIPAA.

With 35 years in the HIM field, Jill Callahan Dennis, JD, RHIA, understands the challenges HIM professionals face in implementing the new ARRA and HITECH rules. As principal at the consulting and management firm Health Risk Advantage in Parker, CO, Dennis helped educate other HIM professionals when the HIPAA privacy rule was first published.

Now in *Privacy: The Impact of ARRA, HITECH, and Other Policy Initiatives*, she offers practical advice on how HIM professionals should approach the ARRA and HITECH changes.

"There's no shortage of advice out there on what the regs [regulations] say, but very few people are talking about what to do about it," she says. "What I've tried to do is take the legislation, break it down into manageable pieces, and then talk about what we can do about it."

One Rule at a Time

HIM professionals shouldn't be intimidated by the rules, Dennis says, and they can take advantage of their past experiences shepherding in change.

"I talk to people who are just overwhelmed at all the changes that need to be made. And you don't really need to be," she says. "You need to say, 'What do we need to do first, second, third, fourth?' These are the types of changes we've walked through before, so how are we going to sequence this so it is actually doable."

Dennis recommends taking each rule and regulation as it comes.

"You need to take a look at the effective dates-when do I have to be in compliance with various parts of it-and then stagger your work accordingly, because there are certain things that you're not going to really be held accountable for until the implementing regs are out there," she says. "If you're picking a place to concentrate your effort, you really want to focus on things that you're legally responsible for now, and you can worry about some of the other things later."

One thing organizations must tackle now, if they haven't already done so, is compliance with the breach notification regulations. "If [organizations] haven't already done that, they need to nail it down because it's so important and because it's already effective. That's a big one in terms of staff education, because until you know about the potential breach, you can't do the risk analysis that's required." In organizations where that message has not gotten out, education on breach notification should be "priority number one," according to Dennis.

The excerpt above outlines a few implementation strategies HIM professionals can use for the ARRA-HITECH changes. One example Dennis warns against is canned, boilerplate policies.

"It seems like whenever we get a new set of regs, a lot of publishers rush to put out canned procedures. So I tried to point out [in the book] the weaknesses of those and the danger in just throwing them at your staff and hoping for the best, because they don't work. We know they don't work. We know it's someone's interpretation. It's not really specific to your own workflow, your own policies."

Business associate contracting strategy is another case in point. "Everybody knows what the regs say on that, but the point is how do you deal with it, how do you sequence what to do first?" Dennis notes. "Do I have to change all of them at once? What are the issues if I sequence them in?"

Implementation Strategies for ARRA-HITECH

HIM professionals may feel overwhelmed by the multiple rules and regulations being published as a result of ARRA and HITECH. Here, Dennis offers some simple implementation strategies HIM professionals can use for the ARRA-HITECH changes.

Guide the Change Process

Organization-wide change isn't easy to achieve or sustain. Don't jeopardize the odds for successful ARRA/HITECH implementation by turning over responsibility for implementation to a committee without sufficient power and influence to make things happen. Kotter urges consideration of four key characteristics when building an effective coalition to guide change (Kotter 1996, 57):

- **Position power:** Are enough key players on board, especially the main line managers, so that those left out cannot easily block progress?
- **Expertise:** Are the various points of view (in terms of discipline, work experience, and such) relevant to the task at hand adequately represented?
- **Credibility:** Does the group have enough people with good reputations, so that its pronouncements will be taken seriously?
- **Leadership:** Does the group include enough proven leaders to be able to drive the change?

If these characteristics match up well with the HIPAA team from years ago that worked to implement HIPAA's changes, the organization may have a head start. Of all staff members, these individuals are probably most conversant with fundamental privacy and security principles. However, take into account whether that team needs to be supplemented to meet the criteria listed earlier. Are new parties needed? Are current parties no longer needed?

Consider, as well, whether this team has the project management skills and tools that will facilitate bringing the necessary changes in on time. The law has varying and staggered effective dates, and different departments and subsets of the organization will be involved in various aspects of compliance. Implementing these changes will be somewhat complex and will require good documentation of the decision-making process. In fact, that documentation will be especially important for business associates who will be complying with HIPAA's security regulations for the first time and will therefore engage in decisions about the "addressable" security implementation specifications. Those decisions' rationales will need to be maintained in the event those decisions are challenged.

Divide Up the Work

Implementation of the new provisions will require a number of changes to business policies and practices. If all policies and procedures are being rewritten by a single individual (or the same handful of individuals), that's probably a good sign of an implementation destined for failure. After the HIPAA Privacy Rule was announced,

publishers came out of the woodwork to offer boilerplate policy and procedure manuals to "ensure" compliance with the rules. Other covered entities tended to borrow the policies and procedures of other covered entities and simply change the logos and titles to make it appear that this was their own. The problems with these boilerplates and borrowed materials are:

- They probably don't reflect each organization's reality, which limits their value as guidance to staff.
- Because they don't reflect reality, they're not useful in supporting disciplinary actions or sanctions taken against those who violate the standards they contain.
- When the discrepancies between these documents and actual practice are discovered as part of litigation or enforcement actions, it reflects poorly on the organization and makes staff actions more difficult to defend or justify.
- An organization is trusting that the author really understands the underlying laws and regulations. That trust may or may not be justified.

Although it can be instructive to have a starting point when writing policies and procedures, it's vital that these reflect actual and expected practices of each organization. Use them with caution and only after they have been reality-tested with affected staff. An organization's workflow, culture, and staff characteristics should drive these documents, along with requirements of the law. That probably means involving a variety of managers and staff in actually drafting procedures and then having a more centralized process for checking for compliance with all applicable laws and regulations.

Source: Dennis, Jill Callahan. *Privacy: The Impact of ARRA, HITECH, and Other Policy Initiative*s. Chicago, IL: AHIMA, 2010.

Bridge Building

Dennis recommends that HIM professionals work with others within their organizations to create compliant programs.

"Implementation is going to require the cooperation of a wide variety of staff in the organization, so there's no reason that sole responsibility for implementation should be falling on a single set of shoulders," she says.

"Frankly, it's an opportunity, if you've got a team that's involved in implementation, to build some very useful bridges for other purposes too. If somebody comes to you and says 'Tag! You're it,' as far as implementation goes, you ought to say 'Who are the key people I need to involve on this team?' There are some suggestions in the book on the kinds of folks who should be involved in that process. Put together that team and say, 'Okay, here are the things we need to do. Who's best positioned to do that?'"

Meg Featheringham (meg.featheringham@ahima.org) is assistant editor at the *Journal of AHIMA*. Jill Callahan Dennis's book *Privacy: The Impact of ARRA, HITECH, and Other Policy Initiatives* is available from AHIMA Press at https://www.ahimastore.org.

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