Refocusing on Confidentiality and Security

Save to myBoK

by Dan Rode, MBA, FHFMA

Health information confidentiality and security are hot topics again this year. Like other HIM issues, confidentiality and security are integrated into many other issues. This article reviews some of the activities that have occurred this year and previews what lies ahead.

Genetic Nondiscrimination

The year began with the promise of the passage of the genetic nondiscrimination legislation that has been sought for almost 10 years. To date, Senate bill 358 and House bill 493, both titled “Genetic Information Nondiscrimination Act,” have made it through the various subcommittees and committees and have been approved by the House. Passage of the bill looks promising; however, there is a hold on the bill delaying final Senate approval.

Privacy and Health IT

In February the Government Accountability Office released a report titled “Health Information Technology: Early Efforts Initiated but Comprehensive Privacy Approach Needed for National Strategy.” It suggested that while the Office of the National Coordinator for Health Information Technology (ONC) had initiated steps to define solutions for the protection of personal health information, it had not yet “defined an overall approach for integrating its various privacy-related initiatives and addressing key privacy principles, nor has it defined milestones for integrating the results of these activities.”[1]

A subcommittee of Homeland Security and Government Affairs also held a hearing in February to hear testimony from the now-permanent national coordinator of health IT, Robert M. Kolodner, MD, and other federal and industry experts. The questioning had more to do with whether ONC had enough resources to complete the integration called for in the report than what Congress might do to help resolve privacy issues that were serving as a barrier to health IT progress. Nothing further has come from the February hearing.

Recognizing the Roadblocks

One of the activities well under way when the hearing took place was the Health Information Security and Privacy Collaboration (HISPC), for which ONC contracted with RTI International. The project coordinated 33 states and Puerto Rico to identify state legislative, regulatory, and business practice barriers that could affect the establishment of interoperable health information exchange (HIE) networks.

The state efforts were reported in a March two-day conference and individual state reports. RTI reported the following preliminary findings:

- “Differing interpretations of HIPAA among states and businesses create a wide variety of organization-level business practices across the nation.”
- There is significant concern related to the technology available to protect security and privacy of personal health information as well as the “associated administrative processes and liabilities.” Consumers are most concerned about privacy, while providers “are more concerned about liability.”
- There is a general misunderstanding regarding the “potential intersections of present state laws and HIPAA.” RTI suggests that “state laws do not currently address or apply sensibly to the proposed electronic exchange of health information.”
- Uncertainty exists on how HIE networks will function and how electronic data exchange will be overseen, which makes their legal status questionable.

- There is a lack of standard definitions and terms to use in state and federal legislation, regulation, and business processes to facilitate HIE. Standardization is necessary to have the integration of all of these "rules."
- "Stakeholders are concerned about policies that would govern the rights, responsibilities, and management of health information" within the nationwide health information network. "A key question is whether and/or how much access patients should have to their health information."[2]

The HISPC findings are not new to most HIM professionals; the state efforts, however, provide significant information, which was only anecdotal before. Several state groups report that projects to review and consolidate laws and regulations for an electronic environment are already under way. Just what will be necessary for the networking of information across states continues to be considered in other projects in progress at ONC, the American Health Information Community (AHIC), and other public and private organizations.

Examining HIPAA

Currently, the AHIC work group on confidentiality, privacy, and security is considering testimony and other input on how the HIPAA privacy and security regulations might address entities that create, store, or transmit individual identifiable electronic health information for clinical care or consumer management. The question is whether requirements should, at a minimum, be equivalent to the HIPAA principle for entities that are not currently covered under HIPAA today.

In facilitating the work group, ONC has ensured that it is working in conjunction with the efforts of the National Committee on Vital and Health Statistics' subcommittee on privacy and confidentiality. The subcommittee has taken on the task of examining the post-HIPAA implementation environment and ensuring the privacy of healthcare information.

The subcommittee continues its review of non-HIPAA entities and what is needed to increase the protection of health information in these entities. It also is looking at how to correct some of the problems that are occurring between covered and noncovered groups.

Last fall, Secretary of Health and Human Services Michael Leavitt identified a need to address the use of genetic and genomic information in the electronic health record. Leavitt announced a federal effort and sought to form an AHIC work group on the topic. He acknowledged that the subject was premature but suggested that developing uniform standards and definitions now, before genetic and genomic information becomes commonplace, might make for a smoother transition.

The work group for personalized healthcare was established and given the charge to develop a "process to foster a broad, community-based approach to establish a common pathway based on common data standards that encourage the incorporation of interoperable, clinically useful genetic laboratory test data and analytical tools into electronic health records to support clinical decision-making for the healthcare provider and patient."[3] Currently the work group is addressing genetic and genomic test results and family medical history and is expected to make recommendations next month.

State Alliance for e-Health

Last year ONC contracted with AHIMA's Foundation of Research and Education to focus on state-level HIE practices (see www.staterhio.org). This year that contract has been extended to identify best practices in statewide HIE efforts for governance, funding, and data exchange.

ONC has also contracted with the National Governors Association to identify and assess barriers to the exchange of health data between states. The National Governors Association formed a committee, the State Alliance for e-Health, to address issues that have already surfaced from other AHIC and ONC activities, including a task force for health information protection.

This task force is examining the rationale behind the major state health privacy protection laws that affect the sharing of heath information across entities (whether paper-based or electronic). It will then discuss the applicability of each kind of protection and provide recommendations for addressing issues arising from such protections. This process is expected to take several years to reach its goals.

Other State HIE Activities

Much work is also being addressed in the states. HIEs remain under development, and state executive and legislative branches are working with some of the national groups to resolve problems and develop appropriate rules, regulations, and laws that will support and facilitate the appropriate electronic exchange of health information.

Much expertise is needed, and HIM professionals are key to the success of these efforts. We have a wonderful opportunity to help build tomorrow's healthcare network that will benefit providers, secondary users of data, health professionals, and patients. Make it happen—volunteer and get involved.

Notes

1. Government Accountability Office. "Health Information Technology: Early Efforts Initiated but Comprehensive Privacy Approach Needed for National Strategy." February 1, 2007. Available online at www.gao.gov/new.items/d07400t.pdf.
2. RTI International. "HISPC Meeting Sessions and Presentations." March 2007. Available online at www.rti.org/page.cfm?objectid=2A892EAE-397B-47A3-8F2B2273A69A1CC0.
3. US Department of Health and Human Services. "Personalized Health Care." Available online at www.hhs.gov/myhealthcare/goals/index.html.

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

Article citation:
Rode, Dan. "Refocusing on Confidentiality and Security" *Journal of AHIMA* 78, no.6 (June 2007): 18,20.
