

The Omnibus Arrives: OCR Issues HITECH-HIPAA Final Privacy Rule

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The Office for Civil Rights (OCR) has published the long-awaited final omnibus rules covering many HITECH Act requirements in the January 25, 2013 *Federal Register* (78FR5566). The rule is officially titled “Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rule Under the Health Information Technology for Economic and Clinical Health Act, and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rule.” It’s not hard to see why most elect to refer to it simply as the HITECH-HIPAA Omnibus Privacy Act.

The new requirements took effect March 26, 2013. With a minimum six-month implementation, the compliance date for the rules will be no later than September 23, 2013. As such, the healthcare industry is essentially in the first month of implementation-which happens to coincide with AHIMA’s Privacy and Security Month.

AHIMA published an analysis of the new rule at the end of January, which can be found on the ARRA-HITECH privacy and security web page <http://ahima.org/advocacy/arraprivacy.aspx>. The analysis is a helpful tool, but no provider or organization should begin implementation without first reading the rule itself.

What’s Missing?

The requirement for an accounting of disclosure, which would require facilities to track every access of health information, is not included in the omnibus rule. The exact timing for when these requirements will come forward has not been disclosed.

As organizations build or modify their electronic health record (EHR) systems, however, it would be wise to think about how the system will track potential accounting requirements rather than face future expensive modifications.

Business Associates Impacted

The HITECH final rule has now placed business associates under the realm of many HIPAA rules. Business associates are now open to investigation and penalties just like other HIPAA-covered entities. While business associates take on many of the same responsibilities as HIPAA-covered entities, it will behoove any affected organization to ensure full understanding of the new requirements. The new rules will also require many to reexamine-and likely rewrite-any business associate agreements by the compliance date.

An exception is made if a fully compliant agreement was already in place by January 25, 2013 under the pre-HITECH provisions of HIPAA. In this case, the rule allows an extra year to bring a business associate agreement into compliance with the new rules. When AHIMA last checked, many hospitals had over 200 business associate agreements in place.

New Patient Rights

Perhaps the most difficult requirement under the new rules is the provision that allows a patient to request that the provider not release any information with regard to an admission or encounter if the patient personally pays for the associated services in cash.

From the perspective of “pay in cash,” the variety of options available require an organization to determine their policy. Unlike the previous HIPAA rule, however, providers can no longer say “no” to such a request and refuse service.

Unfortunately, the larger the provider, the more complicated this requirement becomes since there are many ways that such restricted information could find its way to a third party, like a health plan. This information cannot be shared, and to do so is not only a violation of this rule but is also considered a data breach.

This requirement necessitates a full organization-wide business and systems review to determine what method will be used to identify information that cannot be shared-while still keeping the information available for patient care and other internal uses.

Patients may have follow-up care that builds on the initial encounter that resulted in the segregated information. All staff will need to understand the method used for flagging the information and how it can or cannot be shared. In addition, patients will need to be educated on the potential need to pay for other care if it cannot be billed without disclosing the data segregated.

Focusing in on this requirement will require full participation for a variety of organization departments, and systems vendors should be contacted immediately to see if they have developed any solutions.

Breach Requirements Included in Rule

The “harm” threshold has been removed from the breach requirements and replaced with a detailed process one must follow if they are not going forward with a breach notification sent to affected individual(s), the media, or OCR. Note that many organizations will have to also consider state requirements when approaching any change to policies and procedures.

Meaningful Use Program Affected

Not all healthcare providers have chosen to participate in the HITECH “meaningful use” EHR Incentive Program. Organizations that are already participating-or anticipate future involvement-in the program should review the meaningful use requirements related to patient access to health information and the timing requirements, which were also changed by the new rule. Inquiries into an organization’s authentication requirements for such access are likely as well, whether or not an organization is involved with meaningful use.

Revamp Notice of Privacy Practices

With all the changes created by the new rule and modifications, a new Notice of Privacy Practices (NPP) will have to be written and distributed to patients. While this is a significant part of the implementation process, it’s a step that can likely be held until a month or two before the compliance date since other changes will affect what goes into the NPP.

New privacy and security orientation sessions should be conducted for all HIPAA-defined workforce members. While some organizations have met the requirement for annual sessions, many have dropped or limited their reorientation programs. Any new workforce orientation programs should also be modified that include facility-specific policies and practices concerning privacy and security.

Timing on Implementation Set

This article does not include many of the other changes included in the HITECH-HIPAA Omnibus Rules. For a full picture of the rules’ impact, read the AHIMA analysis and the rule itself. The industry has 175 days between April 1 and September 23, 2013. These 25 weeks include summer vacations, three holidays, and several other implementation projects. HIM professionals are encouraged to take the time now, during AHIMA Privacy and Security Month, to nail down the strategy and implementation steps needed to achieve compliance come September.

Other Pressing Implementations Exist

Privacy and security are not the only requirements being implemented by health information management professionals. The Centers for Medicare and Medicaid Services (CMS) has said it will not stop or delay the ICD-10-CM/PCS conversion, which means that many payers and a good number of providers will begin testing their systems in October 2013. AHIMA is working through its component state HIM associations to reach out to physician practices and payers (including Medicaid) to assist them in meeting the October 2014 compliance date.

Implementation includes testing, and testing means fixing problems and errors so that providers, health plans, and clearinghouses are prepared to exchange transactions containing ICD-10-CM or ICD-10-PCS next year. A fully tested system also means that organizations can then have newly trained ICD-10-CM/PCS coders use their own system to become familiar with the coding process before the October 2014 date.

There have been a number of meetings this year among the Office of the National Coordinator's (ONC) health IT committees and work groups looking to the future, and stage 3 meaningful use requirements. AHIMA has both responded to the ONC's request for comment on potential components of stage 3 as well as testified to policy workgroups on issues such as clinical documentation integrity and the legal uses of EHRs. These comments and testimony are available on AHIMA's Advocacy and Policy web page.

Discussion in ONC and the various committees and workgroups indicates that the need to learn from stage 1 exists among many members. ONC is keenly aware of all the implementations facing providers and it appears the notice of proposed rulemaking originally expected this summer may be delayed. Whether ONC can move back the deadlines for meaningful use stage 3 is open to question since the HITECH legislation laid out an ambitious implementation schedule.

As always, AHIMA is working to assist HIM professionals through all the changes occurring in healthcare related to both policy and technology. It looks like a busy year ahead.

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