

The Office for Civil Rights Wants Your Input

5. May 2010 By Norbert Kugele

Remember the HITECH Act? Passed in 2009, it amended HIPAA privacy and security rules. Among other things, it beefed up enforcement penalties and required updated business associate agreements and security breach notifications. Possibly, you've forgotten that it also expanded individual rights in connection with electronic health records—particularly an individual's right to receive an accounting of how his or her information has been disclosed.

Under the existing regulatory framework that's been in effect since 2003, this accounting does not have to include the many routine disclosures made for treatment, payment and health care operations purposes. At the time those rules were written, it was believed that having to account for these routine disclosures would be too burdensome.

The HITECH Act, however, may change this. The Act says that covered entities who have electronic health record systems in place will have to begin accounting for all disclosures, including those made for treatment, payment and health care operations, consistent with regulations that the Department of Health & Human Services is to draft—balancing the interests of those wanting to learn about the disclosures with the administrative burden involved in tracking these disclosures. In order to balance these interests, the Office for Civil Rights is asking for information. There's a variety of questions, but they come down to trying to understand the demand for this information and its benefits to individuals versus the feasibility and costs of collecting such information.

In my own experience, not many people request an accounting of disclosures. I suspect many people are simply unaware of the right, but I also think there's some who don't exercise the right because they believe the report isn't very useful if it doesn't include disclosures made for treatment, payment and healthcare operations purposes. From the provider side, however, this sounds like an administrative nightmare, particularly since many systems do not have the capability of capturing the necessary information. Getting that capability will likely require expensive modification, and I think it will be particularly challenging for a system to accurately collect some of this data—particularly the specific purpose for which the data is being disclosed.

Anyway, if you think you have a stake in this, you might consider responding to the request for information. Your input may help shape the regulations.

If you have questions about complying with HIPAA, Warner Norcross & Judd LLP can help. Give us a call!

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