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Understanding the New Accounting of Disclosures Proposed Rule

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Learning Objectives

- Explore the details of the draft rule including the new patient right to receive an access report that sets forth all electronic access to medical and billing records
- Review the changes made by OCR to improve workability and effectiveness
- Examine the implementation schedule that applies to healthcare organizations
- Study how the rule meets the needs of patients with respect to information about disclosures of their data

Current Accounting Rule

- Covered entity and business associate must account for all disclosures of protected health information except:
 - Treatment, payment, health care operations
 - To the individual
 - Incident to a permissible use or disclosure
 - Pursuant to an authorization
 - For the facility directory, persons involved in individual's care, or for notification purposes

Current Accounting Rule

- Covered entity and business associate must account for all disclosures of protected health information except (cont'd):
 - National security or intelligence purposes
 - To correctional institutions or law enforcement (custodial situations)
 - Limited data set
 - Occurred prior to compliance date (April 2003)

Current Accounting Rule

- Covers all protected health information
- Covers six years of disclosures
- 60 days to respond (plus 30-day extension)
- Research protocol listing for large research studies

Current Accounting Rule

- Must include:
 - (Exact) Date
 - Name of recipient
 - Address (if known)
 - Brief description of information disclosed
 - Brief statement of purpose of disclosure

Current Accounting Rule

- Large burden on covered entities to account for disclosures
- Very few requests from individuals
- Kaiser Permanente commented that only .0000075 percent of members requested an accounting in a given year

Current Security Rule

- “*Audit controls.* Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use [ePHI].”
- “*Information system activity review.* Implement procedures to regularly review records of information system activity, such as audit logs, access reports, and security incident tracking reports.”

The HITECH Act: Congress Doubles Down

- HITECH Act expands the accounting of disclosures:
 - Disclosures for treatment, payment, and health care operations (TPO) through an electronic health record
 - HHS should balance individual interest and covered entity burden
 - Covered entities provide disclosures of business associates or list of business associates

HITECH Act

- Timeframe:
 - January 1, 2011 (can be extended to 2013) for new EHRs (acquired after January 1, 2009)
 - January 1, 2014 (can be extended to 2016) for older EHRs (acquired by January 1, 2009)

Proposed Rule: Two Separate Rights

- Right to an “Access Report”
 - Focused on “Who”
- Right to an Accounting of Disclosures
 - Focused on “Why”

Access Report

- Includes any electronic access to designated record sets (DRSs)
 - Medical records
 - Billing records
 - Enrollment, payment, claims adjudication, case or medical management record systems
 - Other information used whole or in part to make decisions about individuals
- Does not distinguish between “uses” and “disclosures”

Access Report

- Includes
 - Date and time
 - Name of person accessing record (or organization, if name is unavailable)
 - Description of information accessed (e.g., medications), if available
 - User action (e.g., view, modify, delete), if available

Access Report

- Covers three-year period
- Includes business associates (at option of individual)
- 30 days to respond (plus one 30-day extension)
- Only electronic information
- Must provide options to limit request to specific date, time period, or person
- Must provide in machine-readable form and format if readily producible (e.g., Word, Excel, HTML, text-based PDF)

Accounting of Disclosures

- More detailed “full accounting”
 - Date (may be approximate, such as “June 2011” or “within month of discharge”)
 - For multiple disclosures, a date range (proposal would not require information about frequency of disclosures)
 - Name of recipient (person or entity)
 - Brief description of type of information
 - Brief description of purpose (or copy of request)

Accounting of Disclosures

- Applies to:
 - Impermissible disclosures (when no breach notice)
 - Public health (other than child abuse or neglect)
 - Judicial and administrative proceedings
 - Law enforcement

Accounting of Disclosures

- Applies to (cont'd):
 - To avert a serious threat to health or safety
 - Certain specialized government functions involving DoD, VA, Dept of State, public benefit programs
 - Workers compensation

Accounting of Disclosures

- Would no longer apply to:
 - Adult or child abuse/neglect/domestic violence reports
 - Health care oversight
 - Research (limited data set and authorized research was already excluded)
 - Decedents (to coroners, medical examiners, funeral directors, and for organ donation)
 - Protective services of President
 - Required by law (other than to courts or for law enforcement)

Accounting of Disclosures

- Other changes:
 - Six years → Three years
 - All PHI → Only designated record sets
 - 60 days → 30 days to respond

Comparison of Accounting and Access Report

	Access Report	Full Accounting
Name of Recipient	Yes	Yes
Paper disclosures	No	Yes
Exact date(s)	Yes	No
Identify purpose	No	Yes
Includes TPO	Yes	No
Identify disclosures outside the DRS system	No	Yes
Machine readable	Yes	Optional

Case Study #1

- Patient wants to know whether neighbor (employee of hospital) knows about his cancer diagnosis
- Hospital provides an access report specific to neighbor (showing that neighbor did not access the patient's information)

Case Study #2

- Patient wants name of everyone who has seen her information
- Provider runs access report for each DRS, requests same from business associates, provides aggregate access report to patient
 - Aggregation does not have to be in any particular order

Case Study #3

- Nurse accesses EHR system, prints record, faxes it to law enforcement
- Access report would show nurse access to EHR system
 - Would not say why, but may say that she printed the information if system logs this information
- Accounting of disclosures would include disclosure to law enforcement
 - Accounting would not identify nurse access since this is a use (internal)

Case Study #4

- Physician with staff privileges accesses hospital EHR system, sends record to specialist for purpose of treatment
- Access report would show physician access to EHR system
 - Would not say why, but may say that she sent the information to a third party, and may even identify recipient, if system logs this information
- Accounting of disclosures would not include disclosure (because disclosure is for treatment)

Proposed Compliance Dates

- Accounting of disclosures changes – 240 days after final rule publication
- Access report
 - January 1, 2013 for new DRS systems (acquired after January 1, 2009)
 - January 1, 2014 for old DRS systems (acquired as of January 1, 2009)

Meeting patient needs

- Access report focuses on information most relevant to patient – who has seen their information
- Accounting focuses on types of disclosures most likely to impact individual
 - E.g., public health investigation, to law enforcement or court, for public benefit determination

How to Prepare

- Don't treat proposal like a final rule
- Do confirm that you have a list of all DRS systems
- Do confirm that all electronic access to DRS systems is being logged
- Do comment on parts of the proposal that are infeasible, overly burdensome, or positive

For more information



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Questions

