

**Intermountain Healthcare's Concerns with the Expansion of HIPAA's Current Accounting of Disclosures Requirements Included in the HITECH Act, part of the American Recovery and Reinvestment Act of 2009
Section 13405(c) of P.L. 111-5**

Summary: Requiring covered entities with electronic health records to have the capacity to produce an accounting of disclosures of protected health information from an electronic health record for treatment, payment, and health care operations over a three-year period reflects an unrealistic sense of the ability of hospitals and other covered entities to track and compile this information. Intermountain does not currently have the storage capacity or the technology to comply with this requirement. Such proposals would impose enormous cost burdens (approximately \$250 million over 3 years to move toward compliance) on health systems such as Intermountain to develop capacities that, in our experience, are sought only rarely by patients. Indeed, while Intermountain provides care in over 6 million patient visits every year at its 23 hospitals and more than 140 clinics, only 10 patients have requested accounting of disclosures reports in the more than 6 years since the Privacy Rule took effect.

Additional Information:

- The expanded accounting of disclosures requirements would require that access to protected health information in the hospital's medical record systems by an affiliated (non-employed) health care provider (a separate covered entity under HIPAA) be trackable for three years. A significant number of Intermountain's inpatient providers are affiliated and not employed (Intermountain employs 800 physicians and has contractual arrangements with more than 3,000 additional physicians). Presently, non-employed providers access patient information over one million times each month in just one of our primary electronic medical record systems.
- The Privacy Rule currently requires that an accounting of disclosures report include the date of the disclosure, a description of the information disclosed, the name (and if known the address) of the entity or person who received the information disclosed, and a statement of the purpose for the disclosure or a copy of a written request for the disclosure. Anticipating that expanded reporting would be similar to current reporting, collecting this information about disclosures creates a workflow burden on all non-employed users (who must provide the information at the time of accessing the data in anticipation of a potential request for an accounting of disclosures report). Data are accessed multiple times per day for multiple patients; adding pop-ups querying for this kind of information would be time consuming and have a high hassle factor; it would also be very expensive to track.
- Intermountain has multiple enterprise information systems, databases and applications that contain electronic protected health information, as well as smaller departmental systems and applications. This is typical of most large healthcare systems that utilize computerized records. Most of these systems are not designed to track disclosures as required by the expanded accounting of disclosures requirements in Section 13405(c).
- Compiling an accounting of disclosures from every electronic system could NOT be accomplished with the click of a mouse or even several clicks of a mouse. Instead, it would require extensive professional time to identify which electronic systems may have been accessed, and then more time to collect and review any information that might be relevant from each of those systems and create one single report that presents the information to the patient in a useful way.
- Intermountain estimates a cost of \$250 million over a three-year period for programming, storage, infrastructure, and personnel costs for moving toward compliance.
- Our experience with accounting of disclosures under the current Privacy Rule (that requires only the capacity to produce accounting of disclosures reports for non-routine disclosures) has shown that: (1) only a very small number of patients ask for such accountings (10 people in the six years since the Privacy Rule took effect); (2) it takes approximately 30 hours of professional staff time to produce each report of non-routine disclosures; and (3) approximately half of the requestors complained that the accounting of disclosures report did not provide the information they were seeking (e.g., did my ex-husband look at our minor child's medical information). (Note that even under the expanded requirements, this kind of parent access would not be required to be included in an accounting of disclosures report.)

Intermountain Healthcare is a not-for-profit integrated health care delivery system of 23 hospitals, more than 140 clinics and related services based in Salt Lake City, Utah. Intermountain's team includes approximately 31,000 employees, providing care in nearly six million patient visits every year. SelectHealth, a not-for-profit insurance company, is also owned by Intermountain and provides benefits for more than 500,000 people. Intermountain has over 500 business associate agreements. A pioneer in the use of information technology, Intermountain has used electronic medical records since the 1970s to implement best practices and clinical protocols – resulting in higher quality care that costs less. Medicare spending could be reduced by a third, with improved quality, if the nation provided care the way care is provided at Intermountain, according to research from Dartmouth Medical School. See intermountainhealthcare.org

For more information, contact Intermountain Healthcare Washington Counsel Karen Sealander at McDermott Will & Emery LLP (ksealander@mwe.com 202.756.8024 (work) 202.321.3172 (cell) 202.547.9547 (home)).