



## CONFIDENTIALITY COALITION

### **Accounting of Disclosure Survey Responses**

The HITECH Act, part of the American Recovery and Reinvestment Act of 2009, was signed into law by President Obama on February 17, 2009. Section 13405(c) of the Act newly requires Covered Entities that use or maintain an Electronic Health Record (EHR) to provide, upon request, an accounting of disclosures made for treatment, payment and healthcare operations purposes through an EHR over a three-year period.

This provision would expand significantly a Health Information Portability and Accountability Act (HIPAA) Privacy Rule requirement that physicians, hospitals, and other covered entities prepare an accounting of all “non-routine” disclosures of a patient’s personal health information. Under the new law, entities would have to account for all disclosures of personal health information for treatment, payment, and healthcare operations.

The Confidentiality Coalition distributed a survey to its members designed to determine the investment that organizations will incur in order to comply with the new requirement, as well as help assess the current compliance burden and the current level of individuals’ interest in accounting of disclosures reports. The survey responders consisted of hospitals and drug stores, both of which are considered providers under the HIPAA Privacy Rule. Survey responses are compiled below, and the following bullet points highlight some of the most significant findings:

- The survey responses noted that the number of individuals requesting an accounting of disclosures report since April 2003 ranged from a low of zero to a high of 15.
- The number of individuals requesting an accounting of disclosures report in 2008 alone ranged from a low of zero to a high of three.
- The most common reason for requesting an accounting of disclosures report involved a family dispute. Such requests often involve an ex-spouse requesting information regarding a child. It should be noted that this kind of parental access, even under the expanded rule, would not be required to be included in an accounting of disclosures report (CFR 164.528).
- Survey responders noted that the mere existence of an audit trail on an information system does not mean that a system has the capacity to output an accounting of disclosures report. For example, audit trails do not distinguish between uses and disclosures.

- Of the responders who had the ability to distinguish between disclosure purposes, which were the minority, the number of disclosures made for treatment purposes ranged from a low of 30,000 to a high of 6 million and the number of disclosures made for payment purposes ranged from a low of 400,000 to a high of 12 million. Importantly, the majority of these disclosures were to other covered entities, with an independent obligation to protect the privacy and security of the protected health information.
- The approximate total annual cost of altering operations (including storage capacity, programming infrastructure, and additional personnel) to comply with the expanded accounting of disclosures requirements ranged as high as \$1 million for an individual provider to as high as \$250 million for an integrated system.
- The expected length of time necessary to make these changes ranged from under one year to more than three years, depending on the size of the entity and the extent to which the entity currently utilizes an electronic health record.
- One hospital Confidentiality Coalition member estimated that health information technology (HIT) incentive payments as a result of the HITECH Act will yield \$3million while the costs of compliance for this accounting of disclosures provision alone will be \$10 million, more than negating the benefit of the HIT incentive.