Accounting of Disclosures
Calculation of the Impact of New Privacy Rule Requirements

Current Law

Under current HIPAA privacy rules (45 CFR §164.528), individuals have a right to receive within 60 days of the request (with one 30 day extension available) an accounting of disclosures of their protected health information (PHI) made by a covered entity (CE), including disclosures to or by the CE's business associates (BA) for up to six years prior to the date on which the accounting is requested, except for disclosures:

1. for treatment, payment, or health care operations
2. to the individual or his personal representative
3. incident to otherwise permitted or required uses or disclosures
4. pursuant to an authorization
5. for the facility's directory or to persons (e.g. family members) included in the person's care and for disaster relief
6. for national security or intelligence purposes
7. to correctional institutions or law enforcement officials for certain purposes
8. of a limited data set
9. that occurred prior to the compliance date for the CE

For each disclosure, the following must be provided:

1. the date of the disclosure
2. the name of the entity or person who received the PHI and, if known, the address
3. a brief description of the PHI disclosed
4. a brief statement of the purpose of the disclosure or a copy of the request for the disclosure

Multiple disclosures to the same entity or person may be aggregated. For disclosures for research of the PHI of more than 50 individuals the CE may provide summary information about the disclosures (which may or may not include the requesting individual's PHI) and contact information for the researcher and the research sponsor. CEs must provide the first accounting of disclosures report without charge. Reasonable cost-based fees may be imposed for additional requests by the same individual within the 12-month period provided the CE informs the individual in advance of the fee and provides an opportunity for the individual to withdraw or modify the request.

Responding to Requests for an Accounting of Disclosures Report Under Current Law (this information will help assess the current compliance burden and the current level of individuals' interest in accounting of disclosures reports):

1. Approximately how many patients do you annually provide care for, pay claims for, or otherwise serve? ____________
2. (a) How many individuals have requested an accounting of disclosures report since April 2003 (when the Privacy Rule took effect)? ____________
   (b) How many individuals requested an accounting of disclosures report in 2008? ____________
3. How many disclosures (please provide an average and/or a range) were listed in the reports you produced? ____________
4. How many of the disclosures listed in the reports you produced were for research purposes (average and/or range please)? ____________
5. Generally describe the steps taken to generate an accounting of disclosures report: ____________
6. Does your staff proactively document the information specifically required for the report at the time a disclosure is made or do you only retroactively recreate/extract this information from existing documentation at the time a patient requests a report? ____________
7. How many information systems with PHI do you have? ____________
8. How many information systems are searched to produce a report? ____________
9. (a) How many automated system interfaces do you have that convey PHI between systems (please describe)? ____________
   (b) How many of these interfaces convey PHI between separate covered entities? ____________
10. (a) How many authorized users do your information systems with PHI have? ________ (b) Of these authorized users, how many are employed by you or considered part of your workforce? ________ (c) Of these authorized users, how many are affiliated, credentialed providers (e.g., non-employed physicians with privileges at your facility)? ____________
11. How many of your information systems currently store audit trail data? ____________
12. What elements do your audit trails capture (user id, log on/off, date/time stamp, patient id, description of information accessed, etc)? ____________
13. How long do your audit trails hold information? ____________
14. How do your audit trails distinguish between a use and a disclosure? ____________
15. (a) Describe how audit trails were utilized to produce the report, if at all? ____________ (b) What, if anything, in addition to audit trails, was used to produce the report? ____________
16. Approximately how many professional staff hours are needed to compile the report (please provide an average and/or a range)? ____________
17. What is the average cost and/or the range of costs incurred to produce a report? ____________
18. If known, what prompted individuals to request an accounting of disclosures report? ____________
19. Were the requestors satisfied with the accounting of disclosures report? ____________

Impact of Expanded Accounting of Disclosures Requirements to Include Disclosures Relating to Treatment, Payment, and Health Care Operations

The HITECH Act, part of the American Recovery and Reinvestment Act of 2009 (the stimulus package), was signed into law by President Obama on February 17, 2009. **Section 13405(c) of the Act newly requires CEs that use or maintain an Electronic Health Record (EHR)[i] to provide, upon request, an accounting of disclosures[ii] made for treatment, payment and health care operations[iii] purposes through an EHR over a three-year period.** In response to a request, CEs may either provide an accounting for disclosures of PHI made by the CE and its business associates or may provide an accounting of disclosures made by the CE and a list of all BAs acting on behalf of the CE including contact information for the BAs. BAs on a CE's list must, in response to a request, provide an accounting of its disclosures.

Timing and Effective Dates

HHS must promulgate regulations on what information must be collected about disclosures by June 30, 2010 (within six months of the date on which HHS adopts HIT technical standards for accounting of disclosures, scheduled for December 31, 2009). The new law stipulates that "[s]uch regulations shall only require such information to be collected through an electronic health record in a manner that takes into account the interests of the individuals in learning the circumstances under which their protected health information is being disclosed and takes into account the administrative burdens of accounting for such disclosures. Covered entities that acquired an EHR on or before January 1, 2009 must comply by January 1, 2014. Covered entities that acquire an EHR after January 1, 2009 must comply by the later of January 1, 2011 or the date that the CE acquires an EHR. HHS may delay the compliance date for CEs by up to two years.

To calculate the impact of this new requirement on Covered Entities and their Business Associates:

1. Is your organization a Covered Entity? If yes, what type of Covered Entity (plan, provider, OHCA, etc) and how many business associates do you have? __________
2. Is your organization a business associate? If yes, please describe your organization: __________
3. Approximately how many disclosures for treatment purposes are made annually? __________
4. Approximately how many disclosures for payment purposes are made annually? __________
5. Approximately how many disclosures for health care operations purposes are made annually? __________
6. 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 the written request for the disclosed information. Anticipating that expanded reporting for treatment, payment and healthcare operations purposes would be similar to current reporting, do you currently have the capacity to produce an accounting of disclosures report that includes such information? __________
7. Would additional storage capacity be required to maintain three years of data on disclosures for treatment, payment and health care operations? __________
   a. If yes, how much additional storage capacity would be required? __________
   b. If yes, what would be the cost of adding this additional storage capacity? __________
8. Would additional programming capacity or infrastructure be required to capture and maintain three years of data on disclosures for treatment, payment and health care operations? __________
   a. If yes, how much additional programming capability would be required? __________
   b. If yes, what would be the cost be of adding this additional capacity? __________
9. Would additional personnel be needed to maintain the capacity to produce accounting of disclosures reports that included disclosures for treatment, payment and health care operations over a three-year period? __________
   a. If yes, how much additional personnel would be needed? __________
   b. If yes, what would be the cost of adding this additional capacity? __________
10. What would you suggest to ease the compliance burden? (e.g., reduce the information required to be collected about each disclosure/eliminate the requirement to account for disclosures made to health care providers who are authorized users of the CEs EHR/allow CEs to charge for the labor cost of creating a report) __________
11. a. What is the approximate total cost of altering your operations to be able to comply with the expanded accounting of disclosures requirements? __________
   b. How long do you estimate it will take to make these changes to your systems? __________
   c. What is the estimated annual cost of system maintenance? (just the incremental cost for compliance with the new requirements) __________
   d. How many man hours do you estimate it would take to compile an accounting of disclosures report only for disclosures for treatment, payment and health care operations disclosures? __________

Your Name & Title: __________

Company: __________

Address: __________

Phone Number & Email Address: __________

[1] ***Electronic Health Record*** means an "electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff." (HITECH Act §13400(5))

[2] ***Disclosure*** means "the release, transfer, provision of, access to, or divulging in any other manner of information outside the entity holding the information." This is different from "***use***," which means, "with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information." (45 CFR 160.103)

[3] ***Treatment*** means the provision, coordination, or management of healthcare and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party; consultation between health care providers relating to a patient; or the referral of a patient for health care from one health care provider to another. (45 CFR 164.501)

Payment means: (1)The activities undertaken by: (i) A health plan to obtain premiums or to determine or fulfill its responsibility for coverage and provision of benefits under the health plan; or (ii) A health care provider or health plan to obtain or provide reimbursement for the provision of health care; and (2) The activities in paragraph (1) of this definition relate to the individual to whom health care is provided and include, but are not limited to: (i) Determinations of eligibility or coverage (including coordination of benefits or the determination of cost sharing amounts), and adjudication or subrogation of health benefit claims; (ii) Risk adjusting amounts due based on enrollee health status and demographic characteristics; (iii) Billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess of loss insurance), and related healthcare data processing; (iv) Review of health care services with respect to medical necessity, coverage under a health plan, appropriateness of care, or justification of charges; (v) Utilization review activities, including precertification and preauthorization of services, concurrent and retrospective review of services; and (vi) Disclosure to consumer reporting agencies of any of the following protected health information relating to collection of premiums or reimbursement: (A) Name and address; (B) Date of birth; (c) Social security number; (D) Payment history; (E) Account number; and (F) Name and address of the healthcare provider and/or health plan. (45 CFR 164.501)

Health care operations means any of the following activities of the covered entity to the extent that the activities are related to covered functions: (1) Conducting quality assessment and improvement activities, including outcomes evaluation and development of clinical guidelines, provided that the obtaining of generalizable knowledge is not the primary purpose of any studies resulting from such activities; population-based activities relating to improving health or reducing health care costs, protocol development, case management and care coordination, contacting of health care providers and patients with information about treatment alternatives; and related functions that do not include treatment; (2) Reviewing the competence or qualifications of health care professionals, evaluating practitioner and provider performance, health plan performance, conducting training programs in which students, trainees, or practitioners in areas of health care learn under supervision to practice or improve their skills as health care providers, training of non-health care professionals, accreditation, certification, licensing, or credentialing activities; (3) Underwriting, premium rating, and other activities relating to the creation, renewal or replacement of a contract of health insurance or health benefits, and ceding, securing, or placing a contract for reinsurance of risk relating to claims for health care (including stop-loss insurance and excess of loss insurance), provided that the requirements of §164.514(g) are met, if applicable; (4) Conducting or arranging for medical review, legal services, and auditing functions, including fraud and abuse detection and compliance programs; (5) Business planning and development, such as conducting cost-management and planning-related analyses related to managing and operating the entity, including formulary development and administration, development or improvement of methods of payment or coverage policies; and (6) Business management and general administrative activities of the entity, including, but not limited to: (i) Management activities relating to implementation of and compliance with the requirements of this subchapter; (ii) Customer service, including the provision of data analyses for policyholders, plan sponsors, or other customers, provided that protected health information is not disclosed to such policy holder, plan sponsor, or customer. (iii) Resolution of internal grievances; (iv) The sale, transfer, merger, or consolidation of all or part of the covered entity with another covered entity, or an entity that following such activity will become a covered entity and due diligence related to such activity; and (v) Consistent with the applicable requirements of §164.514, creating deidentified health information or a limited data set, and fundraising for the benefit of the covered entity. (45 CFR 164.501)