



Client Alert

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Providers Should Be Aware of Enhanced Accounting of Disclosures Requirements under HITECH

By now, healthcare providers should be aware that the Health Information Technology for Economic and Clinical Health Act (HITECH), signed into law by President Obama in February 2009, has rendered significant changes to the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

Among the changes wrought by HITECH are enhanced requirements related to the accounting of disclosures of a patient's protected health information (PHI). The HIPAA privacy regulations define the term "disclosure" as "the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information."

Even prior to HITECH, HIPAA afforded patients the right to an accounting of disclosures of PHI, but that right did not extend to certain routine disclosures of PHI, including disclosures that were made for purposes of treatment, payment and healthcare operations. After HITECH, however, HIPAA-covered entities (and their business associates) are no longer exempt from accounting for disclosures that are made "through an electronic health record."

The effective date of the new accounting requirement depends upon when the covered entity implements the use of electronic health records (EHRs). If the entity acquired the EHR as of January 1, 2009, the effective date is January 1, 2014. For entities that acquire an EHR after January 1, 2009, the effective date is the later date of January 1, 2011 or the date the EHR is acquired. The law provides that these deadlines may be delayed up to two years if necessary.

Recently, the Department of Health and Human Services' Office of Civil Rights (OCR) requested information from the public about accountings of disclosures as part of its rulemaking process. A summary of the comments received by OCR will be published in an upcoming issuance of the Federal Register, possibly along with new proposed rules on the subject.

Accounting for the routine disclosure of PHI for the purposes of treatment, payment, and healthcare operations is already being characterized by covered entities as a "logistical nightmare." Hopefully, the extended schedule described above will give covered entities adequate time to prepare for compliance.

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