

Living with an Electronic Medical Record

HIPAA Privacy & Security

April 29, 2009



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CHITA “Living With An EMR”

American Recovery & Reinvestment Act of 2009

- EMR technology improves the quality and efficiency of health care, but has often been viewed as a luxury rather than a necessity
- American Recovery & Reinvestment Act of 2009 strongly promotes rapid EMR adaptation – pay now or pay the price later
 - \$17 Billion available to hospitals & physicians that adopt EMR technology
 - Up to \$11 million for hospitals & \$64K for physicians
- Hospitals and providers who do not adopt EMR technology will be penalized by 2015 with reduced Medicare payments

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American Recovery & Reinvestment Act of 2009 HIPAA Privacy and Security Changes

HIPAA Before ARRA	HIPAA After ARRA
<ul style="list-style-type: none">•Business Associates are accountable via contract with a covered entity•Member notification not required.•Member can request restriction; Covered entity not required to comply•Accounting of Disclosures requires that all inappropriate disclosures for the previous six years must be logged•Enforcement is handled at the federal level with potential civil penalties	<ul style="list-style-type: none">•Business Associates are directly accountable•Member notification is required•Member can request restriction on disclosures for self-pay services•All disclosures and uses of electronic health records (including TPO) for the previous three years must be logged•Enforcement resides at the state and federal government

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HIPAA Privacy and Security Changes

HIPAA Before ARRA	HIPAA After ARRA
<ul style="list-style-type: none">•Civil penalties or settlements go to general treasury•Civil penalties:<ul style="list-style-type: none">–\$100 per violation, annual max of \$25K•HHS Audits may be done	<ul style="list-style-type: none">•Civil penalties/settlements go to Office of Civil Rights to fund increased enforcement•Civil penalties:<ul style="list-style-type: none">–Maximum of \$50K per violation, annual max of \$1.5 million.•HHS Auditing is required

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Monitoring EMR Access

- Data Replication and Integrity
 - Governing the use of copy and paste
 - Appropriate electronic signatures
- EMR technology:
 - Reduces potential medical identity theft
 - Red Flag Rule Effective 5/1/2009
 - Many providers require photo ID at the time of service
- CMS HIPAA Privacy & Security Audits
 - Audit Triggers
 - PricewaterhouseCoopers

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Monitoring EMR Access

- **Nurse pleads guilty to privacy violation...** She then gave the information to her husband who called the patient and threatened to use the information against the patient.
- **Man found guilty in Santa Rosa identity theft case -** A former Santa Rosa Medical Center nurse took the stand Thursday and admitted that he stole a patient's identity and used it to get thousands of dollars to purchase vehicles.
- **UCLA Medical...** Center is taking steps to fire at least 13 employees and is disciplining others, including doctors, for looking at a star's confidential files.
- **'SCAM' GUY HIT 50,000 HOSP ID THEFT SPREE...** employee charged with selling patient information as part of a wide-scale identity-theft ring illegally accessed nearly 50,000 patient files.

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American Recovery & Reinvestment Act (ARRA) of 2009 Implementation Timeline

- Upon Enactment (2/16/2009):
 - Application of new tiered civil penalties
- Within 45 Days of Enactment:
 - Appointment of HIT Policy Committee Members
- Within 60 Days of Enactment:
 - HHS Guidance on data security methodologies/technologies
- Within 180 Days of Enactment:
 - HHS & FTC to issue final rules on breach notification requirements
- By December 31, 2009:
 - HHS must adopt initial prioritized set of standards for accounting of disclosures

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American Recovery & Reinvestment Act (ARRA) of 2009

Implementation Timeline

- Within One Year Post Enactment (2/17/2009):
 - HHS appointment of Chief Privacy Officer
 - GAO to issue report on best practices for disclosures & use of electronic informed consent
 - HHS to provide guidance on de-identification of data
 - HHS to issue guidelines on effective technology safeguards for HIPAA
 - HHS/FTC to report on privacy and security requirements for EMR/PHR Vendors and applications

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American Recovery & Reinvestment Act (ARRA) of 2009

Implementation Timeline

- One year post enactment (2/17/2009):
 - OCR/HHS to application of criminal penalties for non-covered entities
 - Patient right to restrict disclosures for services paid out-of-pocket
 - HHS required to conduct period audits of covered entities
 - Patient right to access electronic medical records
- Within 18 months of enactment (8/17/2010):
 - HHS to issue guidance on minimum necessary requirements
- By 2011:
 - Initial deadline for complying with new accounting and disclosure rules

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American Recovery & Reinvestment Act (ARRA) of 2009

Implementation Timeline

- 24 Months Post Enactment (2/17/2011):
 - Clarification of ability to pursue civil penalties when criminal penalties are not pursued
- By 2012:
 - Regulations for methodology for distributing penalties/settlements to harmed individuals
- By 2013:
 - Extended deadline for complying with new accounting and disclosure rules

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American Recovery & Reinvestment Act (ARRA) of 2009

Implementation Timeline

- By 2014:
 - GAO will report on the impact of ARRA
 - Initial deadline for complying with new accounting and disclosure rules for information acquired before 1/1/2009
- By 2016:
 - Extended deadline for complying with new accounting and disclosure rules for information acquired before 1/1/2009

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Resources

- Center For Democracy & Technology
- Nimbus Health, LLC
- PTSO of Washington
- National Health Care Anti-Fraud Association
- Federal Trade Commission
- World Privacy Forum
- American Recovery & Reinvestment Act of 2009
- Office of Civil Rights
- 45 CFR 164.306 - 310

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