



HIPAA DISCLOSURES PROPOSED RULE

In the May 31, 2011 Federal Register, the Department of Health and Human Services (HHS) published proposed changes regarding the provisions of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) concerning accounting of disclosures of electronic protected health information (ePHI). The proposed rule expands on some of the elements of the HITECH Act, including specifically, the requirement that covered entities and Business Associates be able to provide an accounting of disclosures of PHI through an electronic health record system for treatment, payment and healthcare operations (TPO) for up to three years prior to the date of such a request. The proposed rule implements the elements of this requirement through the right to an “access report”. This report must include an accounting of who accessed electronic health information within a designated record set, for any reason. The proposed rule covers both the uses and disclosures of PHI regardless of the purpose of either.

It is duly noted that this rule is indeed proposed. Accordingly, it is subject to change. Nonetheless, there are a few elements that likely will be adapted. These include the following:

- **The creation of a new access report** for designated record sets (DRS) which contain electronic PHI. In most cases electronic health records (EHR) likely already collect this data. However, covered entities (CEs) and Business Associates (BAs) who already have DRS’ will need to create reports that are readable by all individuals.
- **Updated notice of privacy practices (NPP).** Because individuals will have the need to know their new and expanded rights under the proposed disclosure rules, CEs will need to update their NPPs to ensure that they are providing patients with the information according to the new requirement and within the indicated time frames.
- **A decrease in the time for accounting for disclosures.** The rule proposes a change from six years to three years for the accounting of disclosures. It is speculated that this likely meant to help save storage space for CEs and BAs.
- **Accounting of disclosure details will expand.** Changes will be necessary to corresponding policies and/or procedures that cover accounting for disclosures. In addition, it may be necessary to change the applications used to log and track these types of disclosures and the way in which accounting is provided to individuals who wish to see this information.
- **BAs’ duties expand.** Under HITECH, BAs were required to comply with all of the elements of the Security Rule. Under the proposed rule, not only will BAs be required to maintain compliance, but they will need to have the ability to create ePHI access reports which account for any of the new disclosure requirements.



It is critical now more than ever that you communicate routinely with your electronic health records vendor to make certain that they are up to speed on the proposed changes and can offer you easily implemented solutions for the requirement for disclosures of ePHI. These requirements relate not only to the ability of the software program to readily provide information, but also to make certain that your server has adequate memory to retain the information for the required retention period.

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ACO – WHERE DO WE GO FROM HERE?

The public comment period in response to the proposed regulations under the Healthcare Reform Act that relate to accountable care organizations (ACOs) ended in early June. With the end of the comment period came a number of contrary responses from some of the leading providers in the country as well as organizations representing physicians around the country. Notably, the Cleveland Clinic and Mayo Clinic indicated that they would not participate in the ACO concept under the proposed rule. As well, the American Academy of Family Physicians and the American College of Physicians, among other national organizations, spoke out expressing general dissatisfaction with the proposed rule.

Perhaps one of the most thoughtful responses came from Delos M. Cosgrove, M.D., CEO and President of the Cleveland Clinic. In his eight page letter to Donald Berwick, M.D., Administrator of CMS, Doctor Cosgrove itemized the Cleveland Clinic's concerns. Cosgrove's comments basically reflect the frustration seen by many providers in regard to the whole ACO concept. These frustrations include:

- A redundancy in the requirements for the development of specific boards to govern ACOs.
- The requirement for a high level of specificity for developing among other things, evidence based guidelines, the patient engagement processes, processes to coordinate care, and the descriptive plan of how shared savings would be distributed among ACO participants and providers/suppliers.
- Requirements for CMS to approve any ACO marketing materials and communication to beneficiaries.
- A complex and confusing formula related to shared savings based on a three-year experience.
- The ability of Medicare beneficiaries to move from one ACO to another and the requirement that Medicare beneficiaries not know that they are actually part of an ACO, and the practices not know which specific beneficiaries have been assigned to them.



Whether or not we actually move forward with what will be deemed an "ACO under CMS regulations" is unknown at this time. The final rules are due to appear sometime in August of 2011 and set for implementation beginning in January 2012.

ACOs or not, it is fairly obvious that the delivery system must move toward a more clinically integrated model for delivering care. The underlying assumption to all this is a simple one. That is, "quality is cost effective". The development of specific care plans, coordinating hand-offs from one care setting to another, avoiding duplicative tests, will not only address quality but also efficiency.

The evolution that we see coming will be focused specifically on primary care and be centered around the patient centered medical home (PCMH). In order to keep our clients up to speed on the developments in this area, GatesMoore has joined the Patient Centered Primary Care Collaborative (PCPCC). Participation in this group has enabled us to keep abreast of the developments that are occurring nationally and to access PCPCC's resources related to specific guides to facilitate the development of the PCMH.

One other note in regard to ACOs. The concept is already being applied within the private sector. Throughout the country there are various demonstration projects occurring with commercial third party payors, hospital systems and physician groups. We encourage our clients to be aggressive in consideration of these developments by exploring ways to become engaged in the PCMH concept.

IRS INCREASES MILEAGE RATE TO 55.5 CENTS PER MILE

The Internal Revenue Service announced an increase in the optional standard mileage rates for the final six months of 2011. Taxpayers may use the optional standard rates to calculate the deductible costs of operating an automobile for business and other purposes.

The rate will increase to 55.5 cents a mile for all business miles driven from July 1, 2011, through Dec. 31, 2011. This is an increase of 4.5 cents from the 51 cent rate in effect for the first six months of 2011.

USING CREDIT REPORTS AS A TOOL FOR SCREENING PROSPECTIVE EMPLOYEES

In 1997, Congress expanded the Fair Credit Reporting Act (FCRA) to impose legal obligations on employers who use consumer reports, including background, credit and investigative reports, obtained from a consumer reporting agency. Their intent was to protect potential employees from being denied jobs or promotions unjustly due to inaccurate or incomplete consumer reports. The amendments ensured (1) that individuals are aware that consumer reports may be used for employment purposes and agree to such use, and (2) that individuals are notified promptly if information in a consumer report may result in a negative employment decision.

If your practice uses consumer reports, then you should already be aware that:

- Reports can only be obtained with the candidate's permission as evidenced by signing a form expressly for that purposes;

- If the information in the report may cause you to take an adverse action – such as denying employment – **before** taking such action, you are obligated to provide the candidate with a copy of his or her consumer report and a copy of the Federal Trade Commission's "A Summary of Your Rights Under the Fair Credit Reporting Act";

- **After** taking such action, you must provide the candidate with an adverse action notice that includes:

- The name, address, and phone number of the Consumer Reporting Agency (CRA) that supplied the report;
- A statement that the CRA that supplied the report did not make the decision to take the adverse action and cannot give specific reasons for it; and
- A notice of the individual's right to dispute the accuracy or completeness of any information the agency furnished, and his or her right to an additional free consumer report from the agency upon request within 60 days.



Effective July 21, 2011, if you use a consumer report that includes a credit score in order to determine employment eligibility, then you must also disclose to the candidate that a credit score was used, including the credit score itself, up to four key adverse factors in the score, and the name and contact information of the CRA that provided the score.

Keep in mind that a background check obtained from a CRA is also subject to the FCRA – it is not just those that include a credit report or credit score. We therefore recommend that you take a measured approach to consumer reports.

- Ask yourself which positions are truly worthy of a background check. (You cannot arbitrarily decide that one candidate will be subjected to a background check while another candidate for the same position will not; you can, however, elect to screen only final candidate(s) for a position.)

- At the onset of the interview process, tell candidates if the position requires a background check prior to a job offer being extended.

- Use a reputable CRA who will provide you with the tools and training to effectively use consumer reports. They can also guide you through the process of complying with your FCRA obligations.

- The economic environment of the past two years had caused a number of otherwise qualified individuals to experience credit difficulties. It is also possible that a candidate's identity has been compromised. Care should be taken to fully evaluate the candidate, the report and any supplemental information provided, as well the nuances of the position in order to make an appropriate decision.

STAGE II OF MEANINGFUL USE TO BE DELAYED UNTIL 2014

An independent panel responsible for developing clinical and process measures for Meaningful Use has endorsed a recommendation to delay the implementation of Stage II of the Meaningful Use program for one year, until 2014. The immediate result of this is that providers will now have three years, through 2013, during which to verify that they have met Stage I Meaningful Use requirements.

It was determined by the Health IT Policy Committee that the original 2013 time frame for implementing Stage II would not allow vendors enough time to design, develop and test functionality for Stage II. Nor would it enable providers to deploy the new functionality and report measures for one year.

The ripple effect of this is that Stage III will now be delayed until 2015.

CMS will have a year of feedback from the public before the finalization of the Stage II rule in mid-2012. It is anticipated that committee members, CMS and the Office of the National Coordinator for Health IT will begin communicating immediately with vendors about the functions and features that will be required in Stage II and Stage III.

Within the Stage II Meaningful Use measures will be an emphasis on care coordination that combines recording and providing summary of care records. The recommendation will also likely add the requirement to provide a care plan that contains goals and patient instructions, clearly identifies the care team members and the ability to electronically transmit the care record and care plan. Clearly these requirements take into account the concepts of accountable care organizations and, perhaps more importantly, the patient centered medical home.

Company News

CONGRATULATIONS TO THE NEW GRADUATES

GatesMoore is pleased to announce that Regina Dukes, long time employee and Senior Administrative Assistant, was awarded an Associate's of Science degree in Business Administration by Atlanta Metropolitan College, a component of the University System of Georgia. Regina completed her course of study while working full-time, including during one of our busiest tax seasons ever. We are very proud of her great accomplishment!

Briana Gordon, Consultant and candidate member of the American Society of Appraisers, received her Masters of Business Administration degree from Emory University's Goizueta School of Business. Briana specializes in the valuation of healthcare services and assets. We are very proud that Briana has achieved this great accomplishment!

HAYNES ADVANCES IN ACHE

GatesMoore is pleased to announce that Terika Haynes, Consultant, has passed the Board of Governor's Exam for the American College of Healthcare Executives. This is Terika's first step toward becoming a Fellow in the ACHE. Please join us in congratulating Terika on this great demonstration of knowledge and this wonderful accomplishment.

OUR CONSULTANTS PITCH IN

In May, Tucker High School, located in suburban Atlanta, sponsored a Racket Rally Day for a group of special education students. This is a day when these students are given the opportunity to learn how to play tennis. Under the leadership of Barbara Stahura, Senior Consultant at GatesMoore, our consulting team had their own rally by gathering energy drinks, power bars, and an assortment of personal care items to be provided to the Rally Day participants.

As a thank you, our consulting team received a great group picture and a handwritten note from all of the Racket Rally Day participants. Great job consultants for demonstrating support of our community through such a worthy cause.

Update: Practice Management is published quarterly for clients by GatesMoore
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