

Stimulus Plan Mandates Changes to HIPAA Policies, Procedures and Agreements

While the recently enacted federal stimulus plan promises certain financial benefits for healthcare providers, the law also includes changes to the HIPAA standards that will require most healthcare providers to modify policies, procedures and contracts. Many of the changes will not become effective until February 17, 2010, but a number become effective sooner.

Action Items for Healthcare Providers

The stimulus plan, officially named the American Recovery and Reinvestment Act of 2009 (the "Act"), includes several changes that will require action by most healthcare providers. Further details about the Act are outlined below, but the Act will mandate that most healthcare providers do the following:

1. Update HIPAA Policies and Procedures, and the Notice of Privacy Practices to reflect new rules on patient requests for restrictions on use and disclosure of information;
2. Update business associate agreements to address the heightened responsibilities of business associates;
3. For providers that maintain electronic health records, update HIPAA Policies and

Procedures, and the Notice of Privacy Practices for new rules on patient rights to receive accountings of disclosures;

4. Update to HIPAA Policies and Procedures to reflect new requirements for notices following security breaches.

Requests for Restrictions

Under current HIPAA standards, patients have the right to request that healthcare providers restrict the use and disclosure of information, including uses and disclosures for purposes of treatment, payment and healthcare operations. The current HIPAA standards provide, however, that healthcare providers are not required to agree to any request for a restriction. Under the Act, providers will be required to agree to certain requests for restrictions. Specifically, if a provider has been paid in full for a service, and a patient requests that the provider not disclose information to a health plan for purposes of payment or healthcare operations, the provider will be required to comply with the request.

Business Associates

The Act includes potentially significant changes relating to business associates as well. In particular, business associates will now be



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directly liable for breaches of certain HIPAA standards, and are expressly subject to the most of the same security standards as those applicable to healthcare providers and other covered entities. In particular, among other requirements, business associates will now be expressly required to maintain written policies and procedures relating to electronic protected health information, and will be required to name a security official.

Accountings

Under the current HIPAA requirements, if a patient requests an accounting of disclosures, healthcare providers are required to provide an accounting. However, healthcare providers are not required to list disclosures for treatment, payment and healthcare operations. For healthcare providers that maintain an electronic health record, the Act will require that the accounting list disclosures for treatment, payment and healthcare operations as well.

Security Breach Standards

Under the Act, if a healthcare provider learns of a security breach, the provider will be required to follow certain specific procedures to notify the individuals involved of the breach, and to notify the Secretary of the Department of Health and Human Services. Significantly, if the breach involves information about 500

patients or more, the provider will be required to notify the media.

Penalties, Enforcement and Financial Rewards for Patients

The Act increases penalties substantially, authorizes state attorney generals to bring HIPAA enforcement actions, and requires that regulations be established within three (3) years to allow patients to receive a portion of penalties and settlements collected by the government from HIPAA enforcement actions. Prior to the Act, the civil penalty was generally set at \$100.00 per violation, with a typical limit of \$25,000.00. Under the new standards, if a violation is due to “reasonable cause”, the penalty will be \$1,000 per violation, but in other cases, penalties can amount to \$50,000.00 per violation, with total penalties of up to \$1,500,000.00 per calendar year. Significantly, the Act also provides for regulations that will provide patients with an additional financial incentive to make allegations of HIPAA violations to the government.

For more information on the Act, or for assistance in completing the changes required under the Act, please contact Bill Hall or Harold Han, by telephone at 804.967.9604, or by e-mail at bhall@hdjn.com or ghan@hdjn.com. Additional information about Hancock, Daniel, Johnson & Nagle, P.C. is available on the firm’s website at www.hdjn.com.

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