HIPAA
Lesson 5. What is HITECH?

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What is the HITECH Act?

      The Health Information Technology for Economic and Clinical Health Act (HITECH Act) is a legislation, which was created in 2009 to stimulate the adoption of electronic health records (EHR) and supporting technology in the United States. President Obama signed HITECH into law on Feb. 17, 2009, as part of the American Recovery and Reinvestment Act of 2009 (ARRA) economic stimulus bill.

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HITECH Act Summary

As it was originally enacted, HITECH stipulated that, beginning in 2011, healthcare providers would be offered financial incentives for demonstrating "meaningful use" of electronic health records (EHRs) until 2015, after which time penalties may be levied for failing to demonstrate such use.

Providers can start using EHRs as late as 2014 and avoid penalties, but the amount of incentives they are eligible to receive will be less than earlier adopters. The rollout of meaningful use is happening in three stages; providers must demonstrate two years in a stage before moving on to the next one. Because adoption for stage 2 has been slow, the Centers for Medicare and Medicaid Services (CMS) announced in mid-2014 that it will put stage 3 off until 2017.

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What is the HITECH "Meaningful Use"?

The HITECH "meaningful use" is using certified electronic health record (EHR) technology to:

– Improve quality, safety, efficiency, and reduce health disparities

– Engage patients and family

– Improve care coordination, and population and public health

– Maintain privacy and security of patient health information

Ultimately, it is hoped that the meaningful use compliance will result in:

– Better clinical outcomes

– Improved population health outcomes

– Increased transparency and efficiency

– Empowered individuals

– More robust research data on health systems

Meaningful use sets specific objectives that eligible professionals (EPs) and hospitals must achieve to qualify for Centers for Medicare & Medicaid Services (CMS) Incentive Programs.

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HITECH and HIPAA

HITECH and HIPAA are separate and unrelated laws, but they do reinforce each other in certain ways.

For example, ***HITECH stipulates that technologies and technology standards created under HITECH do not compromise HIPAA privacy and security laws***.

It also requires that any physician and hospital that attests to meaningful use must also have performed a HIPAA security risk assessment as outlined in the "Omnibus rule," or 2013 digital update to the original 1996 law.

Another example: ***HITECH established data breach notification rules***; HIPAA's omnibus update echoes those rules and adds details such as holding healthcare providers' business associates accountable for the same liability of data breaches as the providers themselves.

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HITECH and the HIPAA Breach Notification Rule

The HIPAA Breach Notification Rule requires HIPAA covered entities and their business associates to provide notification following a breach of unsecured protected health information. Similar breach notification provisions implemented and enforced by the Federal Trade Commission (FTC), apply to vendors of personal health records and their third party service providers.

The Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009, made some significant changes to the privacy and security rules under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). HIPAA's privacy rule (the "Privacy Rule") imposes standards for the use and disclosure of protected health information ("PHI"), while HIPAA's security rule (the "Security Rule") imposes standards for the protection of electronic PHI.

One significant change to the Privacy Rule and the Security Rule is the requirement that entities covered by HIPAA, including health plans and health care providers ("covered entities"), notify individuals when their "unsecured" PHI has been breached.

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HITECH and HIPAA Violations

The HITECH Act, which became effective on February 18, 2009, established the following criteria related to HIPAA violations:

- Four categories of violations that reflect increasing levels of culpability;

- Four corresponding tiers of penalty amounts that significantly increase the minimum penalty amount for each violation; and

- A maximum penalty amount of $1.5 million for all violations of an identical provision.

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HIPAA Violations and Penalties

HIPAA Violation	Minimum Penalty	Maximum Penalty
Individual did not know (and by exercising reasonable diligence would not have known) that he/she violated HIPAA	$100 per violation, with an annual maximum of $25,000 for repeat violations (Note: maximum that can be imposed by State Attorneys General regardless of the type of violation)	$50,000 per violation, with an annual maximum of $1.5 million
HIPAA violation due to reasonable cause and not due to willful neglect	$1,000 per violation, with an annual maximum of $100,000 for repeat violations	$50,000 per violation, with an annual maximum of $1.5 million
HIPAA violation due to willful neglect but violation is corrected within the required time period	$10,000 per violation, with an annual maximum of $250,000 for repeat violations	$50,000 per violation, with an annual maximum of $1.5 million
HIPAA violation is due to willful neglect and is not corrected	$50,000 per violation, with an annual maximum of $1.5 million	$50,000 per violation, with an annual maximum of $1.5 million

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Important Things To Remember

- The Health Information Technology for Economic and Clinical Health Act (HITECH Act) is a legislation created in 2009 to stimulate the adoption of electronic health records (EHR).
- HITECH stipulates that technologies and technology standards created under HITECH do not compromise HIPAA privacy and security laws.
- HITECH established specific data breach notification rules.
- One significant change to the Privacy Rule and the Security Rule is the requirement that entities covered by HIPAA notify individuals when their "unsecured" PHI has been breached.
- The maximum amount for all HIPAA violations of an identical provision is $1.5 million.

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