



# The NOTEBOOK

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## AHA Diamond Awards: Call for Entries

The 2010 Arkansas Hospital Association (AHA) Diamond Awards Call for Entries has been announced. The open nominations are co-sponsored by the AHA and the Arkansas Society for Healthcare Marketing and Public Relations. Last year, 15 hospitals received awards presented at the AHA's Annual Awards Dinner held in conjunction with the AHA Annual Meeting and Trade Show. This year's recipients will receive their awards during the October 7, 2010 Awards Dinner at the Peabody Hotel in Little Rock.

The 2010 Diamond Awards recognize excellence and encourage improvement in the quality, effectiveness and impact of healthcare marketing and public relations in the state of Arkansas. Awards will be presented in several categories, such as advertising, annual report, Internet Web site, publications, special video production and writing. Diamond Awards (for hospitals with 0-99 beds, 100-249 beds and 250 or more beds) will be presented in each category. Entries will be judged by a panel of judges not affiliated with any Arkansas hospital.

Nominations and entries, accompanied by appropriate documentation, must arrive at AHA headquarters no later than April 16, 2010 (a reduced entry fee is available for entries received no later than Friday, March 12). A brochure providing details of the awards competition was mailed to hospital CEOs and marketing and public relations directors and is available at <http://www.arkhospitals.org/calendarannual.htm>, selecting "2010 Diamond Awards Brochure."



## AHA Annual Meeting, April 25-28, Washington, DC

"America's Hospitals: Dedicated to Excellence, Committed to Communities" is the theme for the American Hospital Association's (AHA) annual membership meeting April 25-28 in Washington, DC. This meeting provides an excellent forum for hospital execs and trustees to learn firsthand about AHA's advocacy agenda and strategy for 2010. In addition, attendees have the opportunity to visit personally with their congressman and the state's two senators to deliver their messages on how federal legislative and regulatory issues are affecting their hospitals and communities. Hopefully, that will include details on legislation aimed at insurance/healthcare reform that could be passed before then.

As it has for the previous two years, the Arkansas Hospital Association will reimburse each CEO of an AHA-member hospital up to \$1,000 to help offset the cost for the registration fee and travel expense associated with attending this meeting. To qualify for the stipend, attendees must participate in all Arkansas activities, including the scheduled visits with Arkansas' congressional leaders.

During the meeting, participants will have the opportunity to attain American College of Healthcare Executives Category I credit; attend executive briefings on topics such as pathways to improved clinical outcomes, hospital information technology, health insurance exchanges, accountable care organizations, and geographic variation in healthcare spending. Other

Paul Cunningham, Editor

Phil E. Matthews, President/CEO; 419 Natural Resources Drive; Little Rock, Arkansas 72205; 501-224-7878; facsimile 501-224-0519

educational opportunities will be available for hospital trustees covering issues such as best practice governance in unforgiving times, trustees' role in establishing a safety culture, and managing and governing in a new economic era. Attendees also will hear presentations from former Senate Majority Leaders Tom Daschle and Bill Frist, *Health Affairs* Editor-in-Chief Susan Dentzler, ABC News veteran Sam Donaldson, and other Washington figures.

However, the most important events involve times set aside to meet with the state's Senators and Representatives, and their key aides on health issues. The AHA will host a reception for the congressional aides on Monday evening, April 26; and on Wednesday, April 28, attendees from each congressional district will meet as a group with their respective congressman in his Capitol Hill office. Additionally, plans are being made for a Wednesday morning breakfast with Senators Blanche Lincoln and Mark Pryor.

Meeting and registration information has been mailed to American Hospital Association members or you may register on-line at [www.aha.org](http://www.aha.org). Please fax a copy of your meeting registration form to Beth Ingram at the Arkansas Hospital Association at (501) 224-0519 to receive special mailings detailing Arkansas events. You may also e-mail attendance plans to [bingram@arkhospitals.org](mailto:bingram@arkhospitals.org). Register by March 12, 2010, and save!



## President Proposes FY 2011 Budget

President Obama last week unveiled a \$3.8 trillion fiscal year 2011 federal budget proposal that includes a "placeholder" for healthcare reform instead of specific proposals, but does not appear to contain additional cuts to the Medicare program for FY 2011. However, the president proposes the creation of a commission to balance the budget, including cuts to Medicare and Medicaid spending, starting in 2015. Those cuts would be in addition to reductions already assumed in the budget. Among other provisions, the budget proposal includes \$25.5 billion to extend through June 30, 2011 the American Recovery and Reinvestment Act's temporary increase in the Federal Medical Assistance Percentage; \$371 billion over 10 years to prevent cuts and provide a 0% increase in Medicare physician payments; and \$1.7 billion for efforts to control healthcare fraud and abuse. For more on the proposed budget, go to <http://www.whitehouse.gov/omb/budget/>.



## Legal Note: HITECH Amends HIPAA Privacy Rules

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 ("ARRA"). Title XIII of the ARRA is known as the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Among other provisions, HITECH makes several changes to the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). *Hospitals should be aware that scattered among the more significant changes to HIPAA made by HITECH, such as the breach notification provisions, there are other lesser-known HIPAA changes that go into effect this month.* They include:

**Fundraising Changes.** Under current HIPAA rules, a covered entity may use or disclose certain limited PHI without the individual's authorization for fundraising activities. In order to do so, however, the covered entity must: (1) include a statement to this effect in its notice of privacy practices; (2) inform the individual in any fundraising materials how to opt out of receiving further fundraising communications; and (3) make reasonable efforts to honor any such requests to opt out. HITECH requires the Secretary of the U.S. Department of Health and Human Services

to issue a rule providing that written fundraising communications must *clearly and conspicuously* provide an opportunity for the recipient of the communication to opt out of receiving future communications. HITECH also provides that if an individual elects to opt out of fundraising communications, the covered entity must treat this election as a revocation of authorization. These changes are scheduled to take effect on February 18, 2010, so covered entities should review their HIPAA policies and procedures regarding fundraising, as well as their notice of privacy practices, to ensure that they are consistent with these requirements.

***Restrictions on Marketing Communications.*** HITECH imposes new restrictions on covered entities' and business associates' marketing communications to potential buyers or users of their products. Under the current HIPAA rule, any communication that encourages the recipient to purchase or use a product or service is "marketing" and requires an authorization unless it is made: (1) to describe a health-related product or service that is provided by the covered entity making the communication; (2) for the treatment of the individual; or (3) for case management or care coordination of the individual, or to direct or recommend alternative treatments, therapies, providers, or settings of care to the individual.

The communications described in these three exceptions have been permitted without the individual's authorization, but under HITECH, receiving anything of value in exchange for making one of these communications changes the rule. A covered entity cannot receive *direct or indirect remuneration* in exchange for making one of these three types of communications *unless*: (i) the communication describes only a drug or biologic that is currently being prescribed for the recipient of the communication, and any payment is reasonable in amount; (ii) the communication is made by the covered entity and individual authorization is obtained; or (iii) the communication is made by a business associate on behalf of the covered entity and the communication is made consistent with the business associate agreement.

Hospitals should review their operations to determine whether they receive anything of value for marketing-related activities, and if they do, ensure that their marketing practices, policies and procedures are revised to be consistent with this provision of HITECH.

***Access to Copies in Electronic Format.*** HIPAA currently provides individuals with the right to access their protected health information (PHI), but it does not specify the format in which the information must be provided. HITECH changes this rule for covered entities that use an electronic health record. In complying with the requirement to provide access for individuals to their PHI under HIPAA, a covered entity that "uses or maintains an EHR is required to produce a copy of such PHI in electronic format upon an individual's request, and if the individual so chooses, to transmit the copy directly to an entity or person designated by the individual." The covered entity may impose a fee for providing the electronic information (or a summary) to the requesting individual, *but* the fee may not be greater than the covered entity's labor costs in responding to the request for the copy (or summary).

The scope of this requirement may be substantial. Section 13400 of the HITECH Act defines "electronic health record" as "an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized healthcare clinicians and staff." This is a very broad definition that *may* be interpreted to include prescription databases, picture archiving and communications systems, and other mechanisms that electronically capture information about patients at the hospital but are not traditionally considered part of the "medical record."

Even providers that already have a full EHR system in place may not have the capability to send full copies of the records to patients or other third parties in an electronic format. However, given the media coverage about the move toward electronic medical records, hospitals likely will see an increase in requests for records in electronic format and should be ready to comply with these additional HIPAA requirements. Accordingly, hospitals should review and revise their policies

and procedures regarding individual access to protected health information and medical record copying fees prior to February 18, 2010.

**Restrictions on Disclosures to Health Plans.** HIPAA gives individuals the right to request that covered entities restrict their uses and disclosures for certain purposes, but until now, covered entities were not required to agree to any of these requests. HITECH changes this rule and requires a covered entity to agree to a requested restriction if: (1) the request is to restrict disclosures to a health plan for purposes of payment or healthcare operations; and (2) the protected health information concerns an item or service for which the healthcare provider has been paid out-of-pocket in full.

This means that a hospital must have a mechanism for identifying PHI related to an episode of care that has been paid in full out-of-pocket and sequestering that information so that it does not go to the patient’s health plan if a request for restriction is made. Hospitals should review their HIPAA policies and procedures regarding an individual’s right to request restrictions and revise them to reflect this change.

While these changes may not be the most publicized changes made to HIPAA by HITECH, they are very important, and covered entities should carefully determine the extent to which their policies, procedures, and practices need to be revised to comply with the new law.

*Suggested topics for the Legal Note may be submitted to [elisawhite@arkhospitals.org](mailto:elisawhite@arkhospitals.org). The Legal Note is provided solely for informational purpose and does not constitute legal advice. Readers are encouraged to consult with their own attorneys about any legal issues, including those discussed in this article.*



## **CMS Expands FY 2010 RAC Documentation limits**

CMS recently expanded the additional documentation limits for its Recovery Audit Contractors (RAC) applicable to fiscal year 2010. Initial limits announced in December 2009 applied only to requests for DRG validation purposes; the same methodology will now be used for reviews of all institutional claim types. CMS will post the limits for physicians, non-physicians practitioners and DMEPOS suppliers at a later date. To view the expanded list, click on: <http://www.cms.hhs.gov/RAC/Downloads/DRGvalidationADRLimitforFY2010.pdf>.



## **The AHA Calendar**

### February 2010

- 9 Retail Math for Your Hospital Gift Shop – Webinar N0210
- 9 Medical Staff Leadership 2010: A Four-part Audio Series – Part 4: Hot Topics – What to Expect in 2010
- 9 Medical Tourism: Why “Your Hospital” Needs a Medical Tourism Strategy! – Webinar T2560
- 10 Coding “Brown-Bag” Webinars 2010: CPT Coding – Part 1 of 2: Overview and Surgery Changes
- 12 The Joint Commission Hospital Accreditation Update: A 3-Part Webinar Series (I0110) – Session 3
- 17 Coding “Brown-Bag” Webinars 2010: CPT Coding – Part 2 of 2: E&M, Radiology, Path/Lab and Medicine Changes
- 18 HITECH: Investigation of Breach of Unsecured Protected Health Information (PHI) – Webinar T2562