**HIPAA Right of Access versus Meaningful Use**

**EHR Incentive Program Portal Access**

*This is the sixth in a series of six articles on HIPAA Privacy Right of Access.*

How do HIPAA and Meaningful Use work together to give patients access to their patient information through portal access?

Under the HIPAA Privacy Rule, an individual has the right to access PHI maintained about the individual by a covered entity in a designated record set. This may contain electronic or non-electronic PHI. See 45 CFR 164.524(a)(1). Under the HITECH Act’s Electronic Health Record (EHR) Meaningful Use Incentive Program, eligible professionals, eligible hospitals, and critical access hospitals (CAHs) may receive incentive payments under Medicare and Medicaid. They can avoid payment reductions under Medicare by successfully demonstrating meaningful use of Certified EHR Technology, which includes providing patients the ability to view online, download and transmit their health information.

It is important to note that in some respects, the EHR Incentive Program contains more exacting standards than the baseline requirements of the HIPAA Privacy Rule. The HIPAA Privacy Rule contains more comprehensive requirements than the EHR Incentive Program (e.g., the HIPAA Privacy Rule access right applies to electronic and paper records, while the EHR Incentive Program applies to certain electronic records).

Below are some key distinctions between the HIPAA right of access and the individual access opportunities that may be offered through the EHR Incentive Program:

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<th>EHR INCENTIVE PROGRAM</th>
<th>HIPAA PRIVACY RULE</th>
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<td>Professional or hospital proactively makes available certain information for the patient to view, download or transmit (more than 50% of patients are provided timely access in Stage 2; more than 80% in Stage 3)</td>
<td>Covered entity required by law to provide individuals with access upon request</td>
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<td>Access is to a specific set of data (e.g., recent lab test results, current medication list and medication history, problem list) maintained in Certified EHR Technology (for Stage 3, the specific set of data is known as the Common Clinical Data Set (CCDS), as defined in the 2015 Edition Health IT Certification Rule)</td>
<td>Access is to requested PHI that is in a designated record set which is PHI that is either maintained electronically (e.g., in the EHR) or other medical information that is not stored in the EHR (e.g., PHI that is stored on paper, billing records and other records used to make decisions about individuals)</td>
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Although the EHR Incentive Program and the HIPAA Privacy Rule are distinct, it is possible for a provider or hospital to leverage its Certified EHR Technology to fulfill its HIPAA Privacy Rule obligations. These include individual access in circumstances where the individual either: (1) requests access to PHI that is held in the Certified EHR Technology; or (2) requests access to his/her PHI, the covered entity professional or hospital informs the individual that the PHI requested is available through the Certified EHR Technology and the individual agrees to access the requested PHI through the Certified EHR Technology.

More information on HIPAA Privacy Right of Access can be found at the following links:

http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/access/index.html

https://www.hhs.gov/hipaa/for-professionals/faq/2057/what-is-the-intersection-of-the-hipaa-right/index.html