HIPAA changes effective Sept. 23

Compliance with a number of changes to patient privacy rules will be required by Sept. 23, 2013, as a result of the HIPAA omnibus final rule released in January. Below is a brief list of these changes:

Breach notification

The final rule changed the definition of what constitutes a breach of protected health information (PHI). Under the new rule, any disclosure of PHI that violates the HIPAA privacy rule is presumed to be a breach unless a covered entity or business associate demonstrates that there is a low probability that the PHI was compromised based on a risk assessment that meets certain requirements. (Visit mgma.com/wl-august-hipaa for resources.)

Business associates and business associate agreements (BAAs)

The final rule expands the definition of business associates to include subcontractors of other business associates, patient safety organizations, health information exchanges and certain personal health record vendors. Business associates now have direct liability under the HIPAA security rule and for certain provisions of the privacy rule, including improper uses and disclosures. The final rule requires new BAAs to reflect these changes. Although the Department of Health and Human Services Office for Civil Rights (OCR) gave additional time to meet this requirement (in some cases until Sept. 22, 2014), BAAs that are entered into on or after Sept. 23 must meet the new requirements. (Read more about business associates in the Washington Link section of the May/June issue of MGMA Connexion at mgma.com/wl-august-baa.)

Using PHI for marketing or fundraising

The rule changes the definition of marketing and expands the types of transactions that require a patient’s authorization. The rule allows more information to be used for fundraising purposes, but it also requires practice...
professionals to give patients the opportunity to opt out of fundraising activities.

**Sale of PHI**

With limited exceptions, a practice may not receive remuneration in exchange for PHI.

**Decedent information**

The rule clarifies that health information about a deceased individual is no longer protected 50 years after his or her death. It also allows practices to disclose PHI about a decedent to individuals who were involved in the patient’s care or payment — as long as such disclosure is not contrary to the patient’s prior expressed preference.

**Student records**

Practice professionals may now release student immunization records to schools without authorization as long as the immunizations are required by state law and the professional documents a written or oral agreement to the release by the parent or emancipated minor.

**Research**

The new rule allows greater flexibility for practice professionals performing research to obtain and combine authorizations.

**Copies of medical records**

The final rule requires practice professionals to provide a patient with an electronic copy of his or her records if it is maintained electronically and the patient asks for it. Practice professionals must also provide a copy to a third party if a patient submits a written request.

**Restrictions on disclosure for out-of-pocket payments**

The final rule requires practice professionals to adhere to patients’ requests not to disclose PHI to their health plans as long as they pay for the healthcare item or service in full and the disclosure would have been for payment or healthcare operations.

**Notices of privacy practices**

These notices must be updated to reflect new patient rights. For more information about these changes, and to download a sample BAA and notice of privacy practices, visit mgma.com/wl-august-hipaa or contact the MGMA Government Affairs department at govaff@mgma.com.