

Privacy & Risk

in the Era of

HITECH Interoperability & Genetic information

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Where We've Been

2003 Compliance Context: Privacy Year 1

- Industry worried that wheels were about to come off
- Ongoing debate whether compliance costs would be justified by the level of benefit to personal privacy
- Uncertainty over application and enforcement:
- The big question: would we adequately advance both health care and privacy

Where We've Been

- **In 2004, GAO reported that at Year One...**
 - *“... implementation of the Privacy Rule went more smoothly than expected”*
 - ◆ “initial confusion has diminished and new privacy procedures have become routine practice for their members’ staff”

GAO-04-965 Privacy Rule Implementation, p. 1

Where We Are:

The 2010 Compliance Context

- **Opportunities, Incentives & Pressures More Intense and Diverse than in 2003.**
 1. **Adoption Drivers**
 2. **Economic and Financial Context/Pressures**
 3. **Far More Complex Regulatory Compliance Requirements**
 4. **Great Opportunities Create Increasing Technological and Application Complexity**
- **How will Privacy and Security Fare?**

Where We Are:

The 2010 Compliance Context

1. Adoption Drivers:

- **Delivering better healthcare quality and value**
- **Cost Efficiencies and Competition**
- **Transformative, Disruptive Research Opportunities**
- **Government Incentives/Penalties**

Where We Are:

The 2010 Compliance Context

2. Economic & Financial Context/Pressures

- **Industry and Financial Trends: payment pressure from government and private payers**
- **Health Care Reform Impact and Uncertainties**
- **Costs and Competition**

Where We Are:

The 2010 Compliance Context

3. Far More Complex Regulatory Environment than in '03

- **Information Regulation**

- ◆ HIPAA
- ◆ HITECH
- ◆ Meaningful Use
- ◆ GINA

- **Non-information regulation**

- **Enforcement Authority**

Where We Are:

The 2010 Compliance Context

- 4. Great Opportunities Create Increasing Technological and Application Complexity**
 - ◆ **Legal Complexity**
 - ◆ **Technical Complexity from Great Opportunities**
 - **The Genetics Research Example**
 - ◆ **Associated technological challenges to protecting privacy**

Where We Have To Go

- **Recent HIMSS Reports (09):**
 - 31% hospitals report data breach in past year;
 - only 1/2 have a plan in place to respond to security breach
 - Compliance respondents reported twice as many breaches as their IT counterparts, in the same institutions
 - Near 1/3 of BA's did not know they are subject to HIPAA
- **CDC/National Center for Health Statistics (09):**
 - 20.5% of office-based physicians using a “basic” system
 - 6.3% using a “fully functional” system.
- **Concerns about resources for EHR adoption**
 - Planning, management commitment
 - Process adoption, not just policy change
 - Personnel and training needs, from clinical professionals to technical and clerical staff

Where We Have To Go:

- **The Questions have changed since '03:**
 - **Not will we get there, but how soon, and who will arrive?**
- **The answers depend on:**
 - **Ability and willingness to commit sufficient resources**
 - **Commitment to ongoing change management**
 - **Commitment to implementation, not just policy**
 - **Balance in the regulatory burden**
 - ♦ **Just saying “make it so” doesn’t make it so.**

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