

# 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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