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Medical groups and health IT organizations are pushing for the U.S. Health and Human Services Department to clarify those terms so that the ground rules and boundaries are well defined. Mr. Hinkley said to expect more clear definitions between now and next summer, when he expects the government to start enforcing this aspect of HITECH.

Under existing laws, patients have the right to "individually requested privacy restrictions," and the new laws will sustain and extend those rights. As of next year, patients will have the right to prohibit a medical practice from disclosing any information to insurers about a patient's self-pay services.

The regulation is an effort to protect patients from insurance company abuses around preexisting or potentially high-risk conditions, explained Mr. Hinkley. For example, a patient will now have the right to pay out of pocket for an HIV test and know that his or her serostatus will not be reported to an insurer that might drop the patient or significantly increase premiums if the patient were found to be HIV positive.

Expect heavy HHS enforcement of this and other privacy restriction rights, Mr. Hinkley said. "The [department's] Office for Civil Rights will step up efforts to make the public aware of this. It applies to anything a patient wants to do outside the scope of a health plan. So you will need to have procedures to document these requests and set up policies about how you're going to manage them."

Penalties for breaches of personal health information and other HIPAA/HITECH violations are significant, ranging from $50,000 to $1.5 million per violation if judges deem that "willful neglect" was involved. But even "unknowing" violations can cost as much as $25,000 per incident. And this is not including any criminal penalties that might be associated with violations.

Mr. Hinkley said to expect significantly ramped-up enforcement of HIPAA and HITECH beginning in the spring. So "this is a great time to do a HIPAA compliance tune-up," he added. "Go back and review your electronic health record system [and] all your practice procedures, talk to your vendors, and make sure everything is in compliance." ■

Study Says Senate Reform Plan Will Raise Premiums

WASHINGTON — A report commissioned by the Blue Cross Blue Shield Association says that individuals buying insurance on the open market will pay 54% more in premiums than they do today if the Senate health reform bill is enacted.

The analysis had been in the works for awhile, but comes on the heels of a Congressional Budget Office that estimated premium costs for individuals and the group market if all the Senate reform proposals were adopted and put into place by the scheduled 2016 implementation date. The CBO report estimated that individuals would pay $5,800 a year for premiums, a slight increase from the $5,500 they could expect to pay under current law.

The individual premium, without federal subsidies, would also be about 10%-13% higher than premiums paid by group members under the reform proposal, said the CBO. But the agency estimated that slightly more than half of those individuals would be eligible for federal subsidies. Those individuals would actually pay 56%-59% less than someone in a group would pay, the CBO estimated.

The BlueCross analysis, which was conducted by the actuarial company Oliver Wyman Inc., estimated that individuals would pay $4,561 in annual premiums, or 54% more than they would pay without reform. Small group premiums (for employers with 2-50 workers) will be about 20% higher, according to the analysis. Both figures exclude medical inflation, so the increases could be even greater, said Jason Grau, an associate partner at Oliver Wyman and a co-author of the analysis.

The Wyman analysis calculated premiums for the year 2019, a few years after the market had settled into the new law, he said.

The CBO underestimated the effects of adverse selection, which he said was more likely given that the Senate bill had minimal penalties for those who choose not to purchase insurance. The lack of stiff fines and the elimination of age rating—in which younger, healthier people pay less—means that insurers will have to raise premiums to cover costs for the older, sicker population likely to sign up for policies, said Mr. Grau.

—Alicia Ault