

Accounting of Disclosures (AOD) Certification Criterion

- **Brief definition of requirement:**

- MU Stage 2 proposed language proposes to adopt AOD reporting criteria for the reporting as was articulated in Stage 1 Certification: As an **optional** certification criterion. However, MU requests public comment on three key items:
 - Should criteria be revised to be a mandatory certification criterion?
 - Can 2014 Edition EHR certification criterion be revised to include capabilities that would comply with the current HIPAA Privacy Rule accounting for disclosure requirements at 45 CFR 164.528?
 - What additional, changes to the certification criterion would be needed to support compliance with the proposed HIPAA Privacy Rule accounting for disclosure provisions as they were proposed?

- **Benefits of requirement:**

- There are many benefits to the audit logging requirements described; these are mainly information security related and are only loosely associated with the AOD reporting requirement.
- There is benefit in keeping the “optional” certification criterion language so long as HHS and OCR have not identified a long-term plan for addressing what the AOD report should entail.
- It would not be a burden for the criterion to become mandatory so long as language was added that refers to the “current” accounting requirements as stated within the HIPAA Privacy and Security rules; however, MU should not interpret what is “currently” required as an Accounting of Disclosures since this is a moving target.

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- **Issues associated with requirement:**

- The MU2 AOD requirements appear to be combining two very different concepts in its requirement. The HIPAA Privacy rule surrounding the Accounting of Disclosures Report is not a technical requirement. It is a manually prepared document that describes research projects, court documents that require delivery of medical records and descriptions of incidents involving other inappropriate disclosures of patient information. Audit data may be supportive of
- MU2 appears to contemplate that the audit language from the HIPAA Security Rule should be used to prepare an AOD report that involve disclosures made for the purposes of treatment, payment or healthcare operations. It is erroneous to believe that audit data alone can be used to meet this requirement. In addition to the audit data, a human must interpret the context of the access event and document the purpose for which access occurred. This is not achievable by technology.
- Audit data does not provide enough information to provide a “description of the disclosure” beyond whether information was read, written, printed, or deleted. It cannot explain the purpose of an access event nor can it collect information needed to decide – in an automated way – if an access event was a “use” or a “disclosure.”
- Unless each access required a human input that asked users to identify a purpose and if the user was an employee or an affiliate at the time of an access event (some of our staff are both and their role would change frequently when accessing data), a system log would not be able to be used for the purpose of AOD reporting.