

HIPAA: Deadlines Pass and Definitions Change

December 22, 2014

For all covered entities and business associates, September 22 was the last day for business associate agreements (BAAs) to comply with the Omnibus HIPAA Rule (the Rule) released in January 2013. Before the Rule's release, business associate agreements had to contain a description of permissible uses or disclosures of protected health information, requirements to help the covered entity respond to individual rights, and certain termination provisions. The Rule generally required covered entities and business associates to update their BAAs by September 23, 2013. But "grandfathered BAAs" – those in place on January 25, 2013 – were given an extra year to comply with additional obligations for BAAs under the Rule. These obligations require references to the business associate's compliance with the HIPAA Security Rule, language regarding subcontractor relationships, and breach reporting requirements. Failure to meet the deadline coupled with an investigation or audit, could subject the covered entity and the business associate to fines and penalties. In other HIPAA news, same-sex marriages must now be recognized. Following the decision of the Supreme Court in *United States v. Windsor*, which held the Defense of Marriage Act unconstitutional, the U.S. Department of Health and Human Services Office of Civil Rights issued guidance clarifying that legally performed same-sex marriages must be recognized under HIPAA. Under HIPAA, legally married persons are each other's "spouse," and same-sex spouses and their dependents must now be considered "family members." This interpretation ensures that same-sex couples and their legal dependents have the right to receive notice of their family member's location, condition, or death pursuant to 42 CFR §164.510(b). In addition, this position extends the protections against genetic discrimination to certain information about the same-sex family members under §164.502(a)(5)(i). Importantly, these definitions apply regardless of whether the married same-sex couple lives in a state that recognizes the marriage.

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