

U.S. Department of Health and Human Services Publishes Final HIPAA Rule Alert

January 24, 2013

The final rule (1) makes final modifications to the Health Insurance Portability and Accountability of 1996 Act (HIPAA) Privacy, Security and Enforcement Rules mandated by the Health Information Technology for Economic and Clinical Health (HITECH) Act; (2) adopts changes to the HIPAA enforcement rule to incorporate the increased and tiered civil monetary penalties initially published in the October 30, 2009 Interim Final Rule; (3) replaces the breach notification rule's "harm" threshold with a more objective standard; and, (4) modifies the HIPAA Privacy Rule to prohibit most health plans from using or disclosing genetic information for underwriting purposes, pursuant to the Genetic Information Nondiscrimination Act. The effective date is March 26, 2013. But HHS provides a grace period that gives covered entities and business associates until September 23, 2013 to comply with the applicable requirements. The modification of the HIPAA Rules will affect covered entities, their business associates, and their subcontractors as follows:

- Makes business associates directly liable for compliance with certain HIPAA Privacy and Security Rules' requirements
- Adds subcontractors to the definition of "business associates," thereby extending the business associate HIPAA Privacy and Security Rules' requirements to subcontractors
- Strengthens limitations on the use and disclosure of protected health information (PHI) for marketing and fundraising purposes, and prohibits the sale of PHI without individual authorization
- Expands individuals' right to receive electronic copies of their records
- Restricts disclosures to a health plan for treatment for which the individual paid out of pocket in full
- Requires modification and redistribution of a covered entity's notice of privacy practices

- Modifies the authorization for research, and disclosure of child immunization, and enables access to decedent information by family members.

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