



Alert

Life Sciences and Health Care Client Service Group

To: Our Clients and Friends

February 17, 2010

HIPAA HITECH Enforcement Date is Here

The Health Information Technology for Economic and Clinical Health Act ("HITECH") was passed last year as part of the American Recovery and Reinvestment Act. With HITECH, Congress amended HIPAA to address issues concerning the electronic storage of health information. HITECH imposes many new requirements and restrictions on the use and disclosure of health information, affecting both covered entities, e.g. providers and suppliers, and their business associates.

At the center of HITECH is its breach notification obligation. HITECH imposes breach notification obligations on both covered entities and business associates, with different requirements for each. Effective today, the Department of Health and Human Services, Office for Civil Rights, can bring enforcement actions against covered entities and business associates who do not meet the following new requirements.

Covered Entities

- Covered entities must give individuals notice of any unauthorized access to their unsecured protected health information.
- The notice must be given in a time and manner consistent with HITECH's requirements.
- The notice may include written notice to individuals, notice to the media, and notice to the Secretary of the Department of Health and Human Services, depending on the circumstances.
- Covered entities must amend their business associate agreements to incorporate the breach notification and other provisions of HITECH.
- Covered entities must update policies, procedures, and employee training to meet these new requirements.

Business Associates

- Business associates must give covered entities notice of any unauthorized access to their unsecured protected health information.

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- Business associates must comply with the HIPAA security rule.
- Business associates are subject to HIPAA's civil and criminal penalties.
- Business associates must formalize and adopt policies, procedures, and employee training to meet these new requirements.

Enforcement

HITECH's many requirements are matched by a new emphasis on enforcement intended to ensure that those requirements are satisfied. Covered entities and business associates should be aware of these new enforcement tools.

- Civil penalties for HIPAA violations are increased up to \$50,000 per violation.
- State attorneys general may seek injunctions and civil fines on behalf of residents affected by a HIPAA violation.
- Business associates may be subject to civil and criminal penalties for violating their business associate agreements.

Conclusion

These changes will likely alter many existing practices. Covered entities and business associates which have not yet designed procedures for complying with the notification requirement should begin immediately. Covered entities should review their business associate agreements to determine what changes are needed to satisfy HITECH. Business associates must adopt their own policies and procedures for data security and breach notification. Given the increased penalties for violating HIPAA, affected organizations can't risk non-compliance.

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For further information, contact Bryan Cave LLP's [Life Sciences and Health Care Client Service Group](#).