

**Upcoming Changes to HIPAA Under the HITECH Act**

January 4, 2010

As you will recall from our prior alerts, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") made several significant changes to HIPAA related to the privacy and security of protected health information ("PHI"). Among the more significant changes to HIPAA under the HITECH Act are: strengthened enforcement mechanisms and penalties for HIPAA violations; new PHI breach notification requirements; new requirements that business associates comply with HIPAA security requirements and certain HIPAA privacy requirements; imposition of sanctions on business associates for HIPAA violations; expansion of certain rights of patients regarding their PHI; and additional restrictions on certain uses and disclosures of PHI. Some of these changes, such as the PHI breach notification requirements and strengthened enforcement and penalties, are already in effect. A number of additional changes will take effect on **February 17, 2010** and we want to be sure you are aware of these upcoming changes.

The primary changes taking effect February 17, 2010 include the following:

- The Department of Health and Human Services will start conducting periodic audits of covered entities and business associates to ensure compliance with HIPAA requirements;
- Business Associates will be required to comply with HIPAA Security requirements and certain HIPAA Privacy requirements and will be subject to sanctions for failure to do so;
- Patients will have the right to restrict the disclosure of their PHI to insurance companies in certain situations;
- Patients will have the right to request a copy of their electronic health record if a covered entity uses electronic health records;
- Additional restrictions are imposed on the use of PHI for marketing purposes; and
- Individual employees may be held liable for improperly using or disclosing PHI without a HIPAA compliant authorization.

These new requirements will require updates to current HIPAA policies and procedures to ensure continued compliance with HIPAA and the HITECH Act. **Importantly, the changes affecting Business Associates will likely require amendment of all existing Business Associate agreements by February 17, 2010.** Please contact one of the attorneys in our Health Care Practice Group if you have any questions regarding these requirements or would like our assistance in updating your organization's existing HIPAA policies or Business Associate agreements.

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