

## HITECH Deadline Comes and Goes, But Where's the Guidance?

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23. February 2010

As you've probably noticed, the deadline for implementing the HITECH Amendments to HIPAA came and went last week without much fanfare—primarily because the Department of Health & Human Services still has not released any guidance on how we should be implementing these changes. Moreover, there's still no indication when the new guidance will come out.

What does this mean? Well, it probably means that the Office for Civil Rights (the division within the HHS that enforces HIPAA) won't be looking to make an example of anybody quite yet—at least with respect to the updated business associate agreement requirements. *It's been reported* that a representative from the Office for Civil Rights, speaking at a conference last week, indicated that enforcement of the business associate provisions will be delayed until final rules have been published.

But before you breathe too deep a sigh of relief, keep in mind that HITECH also gave state attorney generals the right to enforce HIPAA—and the state AGs are not bound by OCR's decision to delay enforcement. *We've already seen* the Connecticut Attorney General bring a HIPAA enforcement action, and who knows how soon other state AGs will get into the game. My guess is that they're not going to be knocking on doors asking specifically about business associate agreements—but if there's some kind of breach and it turns out that a business associate agreement had not been updated on a timely basis, that might get thrown into the complaint as an additional violation.

I've *previously blogged* about what you should be doing to comply with the HITECH amendments to HIPAA. If you need additional help with HIPAA, Warner can help. Give us a call!