

Final Reminder:

HITECH Deadline Looms for Covered Entities and Business Associates Alike

In two days, on February 17, 2010, the HITECH revisions to HIPAA become effective for Covered Entities and Business Associates. The changes impact: **(1)** relationships with and responsibilities of Business Associates, **(2)** notifications of breaches involving PHI and electronic PHI, **(3)** HIPAA enforcement and the penalties for violations, and **(4)** the use of electronic health records. For the first time, Business Associates will be directly regulated by the Security Rule and certain provisions of the Privacy Rule. Consequently, like Covered Entities, Business Associates must assure their compliance with these regulations.

Under this new law, the following represents some actions that must occur by **February 17, 2010**:

1. **Amend business associate agreements.** Agreements with Business Associates need to be amended to include the expanded requirements so they are in compliance with HITECH.
2. **Create business associate policies and procedures.** Business Associates must implement policies and procedures to ensure compliance. Failure to comply with the new HITECH requirements could result in civil and criminal penalties.
3. **Create breach notification policies.** Effective September 23, 2009, Covered Entities and Business Associates should have incorporated breach notification requirements in a new policy or in an existing security incident reporting policy in order to be compliant with the HHS Interim Final Breach Rule. If this has not been accomplished, it needs to be done immediately.
4. **Update Covered Entities' policies and procedures.** Covered Entities need to update their current policies and procedures relating to the individual's right to restrict disclosure, accountings of disclosures, patient access to PHI, minimum necessary requirements, and marketing and fundraising activities to comply with HITECH.

This deadline is upon us, and it is imperative that both Covered Entities and Business Associates be in compliance by February 17, 2010. As this does not constitute an all-inclusive list of HITECH requirements, please contact any of the attorneys listed below for compliance assistance. We will continue to update clients as future guidance is issued.

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The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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