

BURR ALERT

Compliance Deadline for New HIPAA Rules Is Rapidly Approaching

On January 17, 2013, the Department of Health and Human Services ("HHS") released its long-awaited final HIPAA rule, which significantly expands certain obligations for covered entities and their business associates (the "Final Rule"). The Final Rule, which was published in the *Federal Register* on January 25, 2013, has been described as "the most sweeping changes to the HIPAA Privacy and Security Rules since they were first implemented." In general, the Final Rule expands HIPAA obligations for business associates and their subcontractors, revises the requirements regarding the use and disclosure of patient information, expands patient rights, clarifies the content of Notice of Privacy Practices to be provided by healthcare providers, modifies the breach notification requirements, and expands enforcement provisions and penalties. Covered entities and business associates have about sixty (60) days (*i.e.*, until September 23, 2013 -- and in limited circumstances with respect to amending business associate agreements, until September 23, 2014) to achieve compliance with the new provisions.

Covered Entities: In order to achieve compliance, covered entities should undertake the following steps before September 23, 2013:

1. Perform a "gap" analysis to determine what changes are needed to existing HIPAA policies, procedures and forms to address the Final Rule provisions, as well as any changes to address current HIPAA Privacy Rule, HIPAA Security Rule and HITECH Act requirements.
2. Revise existing HIPAA policies, procedures and forms as appropriate. It is important to ensure that the policies and procedures accurately reflect the operations of your business and that you have taken the necessary steps to ensure compliance.
3. Update and revise existing business associate agreements to address the Final Rule provisions and obtain new business associate agreements as needed (*e.g.*, for data storage providers, even if they do not access protected health information).
4. Notify business associates of their obligation to comply with the HIPAA Security Rule and certain parts of the HIPAA Privacy Rule, including the obligation to conduct a Security Rule analysis. Also, notify business associates of their obligation to obtain appropriate HIPAA agreements with their subcontractors who have access to protected health information.
5. Amend Notices of Privacy Practices to address the Final Rule provisions. The new Notices should be distributed and posted as required by HIPAA.
6. Train workforce members on the new HIPAA requirements and obligations and notify them of the changes to your HIPAA policies, procedures, and forms.

7. Implement, as possible, encryption technology for protected health information (especially on laptops and other portable devices) to minimize the risk of having to disclose a breach of protected health information.

Business Associates: In order to achieve compliance, business associates should undertake the following steps before September 23, 2013:

1. Conduct a Security Rule analysis to determine the security risk areas for your business.
2. Implement HIPAA policies, procedures and forms to address your risk areas and new responsibilities under HIPAA as a business associate. It is important to ensure that the policies and procedures accurately reflect the operations of your business and that you have taken the necessary steps to ensure compliance.
3. Obtain appropriate HIPAA agreements with subcontractors who perform activities on your behalf and, in that regard, have access to protected health information.
4. Train workforce members on the new HIPAA requirements and obligations and notify them of your new HIPAA policies, procedures, and forms.
5. Implement, as possible, encryption technology for protected health information (especially on laptops and other portable devices) to minimize the risk of having to disclose a breach of protected health information.

If you have any questions or if you would like additional information on this topic, please contact your regular Burr & Forman attorney or any of the attorneys listed below. Also, please visit our website at www.burr.com where you can access information on additional health law topics and learn more about the firm.



HOWARD BOGARD
Partner ~ Birmingham
(205) 458-5416
hbogard@burr.com



ED BROWN
Partner ~ Atlanta
(404) 685-4292
ebrown@burr.com



KELLI FLEMING
Partner ~ Birmingham
(205) 458-5429
kfleming@burr.com



JAMES HOOVER
Partner ~ Birmingham
(205) 458-5111
jhoover@burr.com



CHET HOSCH
Partner ~ Atlanta
(404) 685-4279
chosch@burr.com



BRANDI KAPLAN
Partner ~ Nashville
(615) 724-3239
bkaplan@burr.com



ROB WILLIAMS
Partner ~ Tampa
(813) 367-5712
rwilliams@burr.com



TOM WOOD
Partner ~ Mobile
(251) 345-8203
twood@burr.com



NINA KUMAR
Associate ~ Nashville
(615) 724-3243
nkumar@burr.com