

THE HEALTHCARE PROFESSIONALS LEGAL CHECK-UP

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2013 RULE CHANGES TO HIPAA, HITECH & GINA

The proliferation of electronically maintained health information has led to increasing regulation of health care providers, health plans, and their business associates to: (1) protect patient privacy; and (2) enable the adaptation of efficient health information technologies. In 1996, Congress enacted HIPAA, the Health Insurance Portability and Accountability Act. HIPAA required covered entities (health care providers, health plans, and health care clearing houses) to adopt privacy and security policies. In 2008, Congress enacted GINA, the Genetic Information and Nondiscrimination Act. GINA prohibited the use of genetic information in health insurance and employment. And, in 2009, Congress enacted HITECH, the Health Information Technology for Eco-

nomics and Clinical Improvement Act. HITECH's main goal was to facilitate the healthcare industry's adaptation of health information technology, but HITECH also supplemented enforcement rules existing under the Social Security Act and HIPAA with respect to the protection of patient health information.

In 2013, the U.S. Department of Health and Human Services ("HHS") promulgated final rule changes to synthesize and strengthen the privacy, security, and enforcement provisions of HIPAA, HITECH, and GINA. Covered entities not previously in compliance with HIPAA and HITECH were expected to be in compliance with the new rules by September 23, 2013. Covered entities in compliance with the old rules

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Ms. Wilson is an associate who practices in Hutchison & Steffen's Healthcare Professionals Advocacy Group, led by Firm Partner, L. Kristopher Rath. Ms. Wilson practices primarily administrative law, as well as in the areas of commercial litigation and family law. The Healthcare Professionals Advocacy Group works closely with healthcare professionals (including physicians, chiropractors, dentists, and nurses) and healthcare organizations on a range of issues, from practice formation and compliance and employee relations to practitioner licensing and board representation, to collections, creditor rights, and asset protection.

This newsletter highlights topics of interest to healthcare professionals. We invite you to contact the Firm to learn more.



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have until September 22, 2014, to come into compliance with the new rules. However, if a previously compliant covered entity revises its policies and procedures before September 22, 2014, the updates must comply with the new rules.

The significant rule changes generally include the following:

- Make business associates of covered entities directly liable for compliance with certain HIPAA privacy and security rules.
- Strengthen the limitations on the use and disclosure of Protected Health Information ("PHI") for marketing and fundraising purposes and to prohibit the sale of PHI without individual authorization.
- Expand individual rights to receive their health information and to restrict disclosures to health plans concerning treatment for which the individual pays out of pocket, in full.
- Modify the individual authorization and other requirements to facilitate research and disclosure of child immunization proof to schools and to enable access to decedent information by family members or others.
- Adopt the additional HITECH Act enhancements to the Enforcement Rule, such as the provisions addressing enforcement of noncompliance with the HIPAA Rules due to willful neglect.

- Increased and tiered civil monetary penalties for violations.
- Final rules for breach notification.
- Final rules prohibiting most health plans from using or disclosing genetic information for underwriting purposes.⁽¹⁾

In sum, it is critical that covered entities routinely review their security and privacy policies, including their agreements with business associates to ensure consistency with current local, state, and federal rules and regulations.



¹ Modifications to HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under HITECH and GINA, 70 Fed. Reg. 5566 (Jan. 25, 2013) (to be codified at 45 CFR pts 160 and 164).

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