

HIPAA compliance deadline approaching: Five steps to ensure you are ready

Authors:

Bruce D. Armon

Karilynn Bayus

SUMMARY

The September 23, 2013 deadline for covered entities, business associates and their subcontractors to comply with new HIPAA rules is fast approaching. Now is the time to ensure HIPAA compliance before the deadline arrives and avoid any penalties that could result from failure to act.

The so-called dog days of August are officially upon us. While September 23, 2013 may have seemed a long time away when the U.S. Department of Health and Human Services ("HHS") issued its omnibus final rule (the "Final Rule") modifying the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") on January 25, 2013, the compliance date is now quickly approaching.

The Final Rule made significant changes that affect covered entities, business associates, and now, subcontractors of business associates. Covered entities and business associates need to be sure that they are in compliance by the deadline or risk penalties associated with HIPAA violations.

There are certain fundamental steps that covered entities should take to make sure that they will be in compliance on September 23. These measures include the following:

- 1. Update Notices of Privacy Practices ("NPPs").** The Final Rule requires changes to be made to covered entities' NPPs. These include: a) describing uses and disclosures of protected health information ("PHI") for which an authorization is required from the patient (such as sale of PHI, uses and disclosures for marketing purposes, or disclosure of psychotherapy notes); b) stating that any uses or disclosures not described in the NPP require the patient's authorization; c) the right of a patient to restrict certain disclosures of PHI to a health plan where the individual pays for the service in full out-of-pocket; and d) informing patients of their right to be notified in the event of a breach of unsecured PHI.
- 2. Update Business Associate Agreements.** The Final Rule added additional requirements for what constitutes a valid Business Associate Agreement. A Business Associate Agreement must include the following: a) business associates must comply with the HIPAA Security Rule; b) business associates must report any breaches of unsecured PHI to covered entities; c) business associates must ensure that any subcontractors that create or receive PHI agree to the same restrictions and conditions as the business associate; and d) business associates are required to comply with the HIPAA Privacy Rule to the extent it is carrying out the covered entity's obligations.
- 3. Update breach response policies.** The Final Rule changed the definition of "breach" as well as the risk assessment that must be undertaken to determine if there has been a breach. It is more likely that an impermissible access, use or disclosure of PHI will be a "breach" necessitating notification to the individual, HHS, and possibly the media. Breach response policies should reflect the new standards.

4. **Review and update your HIPAA Manual.** The Final Rule made numerous changes to the HIPAA Privacy Rule. The changes include revisions to marketing rules involving PHI, new standards relating to the sale of PHI, increased ability of patients to restrict disclosures of PHI, and changes to standards involving access to electronic medical records by patients. These new provisions should be reflected in HIPAA policy and procedure manuals.
5. **Educate employees.** Simply changing policies and procedures is not enough. Employees who handle PHI must be made aware of the revised standards and understand the new policies. Be sure to train your employees.

In addition to the five steps for covered entities to ensure compliance with the Final Rule, business associates and their subcontractors will need to revisit the Business Associate Agreements they send to their covered entities, and ensure their staff members understand what they can and cannot do with respect to HIPAA. Moreover, business associates will now need to implement agreements with subcontractors that are business associates. Business associates may need to develop or revise HIPAA policies and procedures to reflect their new obligations.

Whether you are a covered entity, a business associate or a subcontractor of a business associate, use the month of

August and early September to ensure you will be in compliance with the Final Rule.

Saul Ewing attorneys regularly assist clients with respect to HIPAA privacy and security issues, reviewing and implementing HIPAA compliance programs, drafting and reviewing Business Associate Agreements, and working with clients on breach reporting. If you have questions about this Alert or would like more information, please contact Bruce Armon or Karilynn Bayus, one of the other attorneys in the Health Practice, or the attorney in the firm with whom you are regularly in contact.

This Alert was written by Bruce D. Armon, a member of the firm's Health Practice and Managing Partner of the Philadelphia office, and Karilynn Bayus, a member of the firm's Health Practice. Bruce can be reached at 215.972.7985 or barmon@saul.com. Karilynn can be reached at 215.972.1892 or kbayus@saul.com. This publication has been prepared by the Health Practice for information purposes only.

The provision and receipt of the information in this publication (a) should not be considered legal advice, (b) does not create a lawyer-client relationship, and (c) should not be acted on without seeking professional counsel who have been informed of the specific facts. Under the rules of certain jurisdictions, this communication may constitute "Attorney Advertising."

© 2013 Saul Ewing LLP, a Delaware Limited Liability Partnership.
ALL RIGHTS RESERVED.