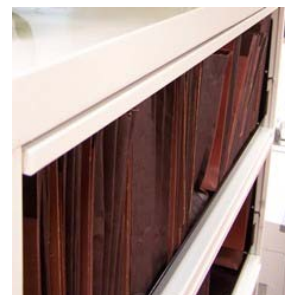


Sweeping Changes to Rules on Patient Privacy and Security of Health Information

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On January 17, 2013, the Department of Health and Human Services (HHS) issued a final rule, significantly modifying the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA). According to HHS Secretary Kathleen Sebelius, “[m]uch has changed in health care since HIPAA was enacted over fifteen years ago . . . The new rule will help protect patient privacy and safeguard patients’ health information in an ever expanding digital age.” The 563-page final rule can be distilled to the four major points set forth below.

1. **Modification to the HIPAA Privacy, Security, and Enforcement Rules.** These modifications:
 - Expand many of the requirements for business associates that receive protected health information, such as contractors and subcontractors. The old rules focused primarily on “covered entities,” that is, health care providers, health plans and other entities that process health insurance claims. Under HIPAA, a “business associate” is a person or entity that performs a function or activity involving the use or disclosure of individually identifiable health information in connection with a covered entity. The modifications make business associates of covered entities directly liable for compliance with certain of the HIPAA Privacy and Security Rules’ requirements.
 - Strengthen the limitations on the use and disclosure of protected health information for marketing and fundraising purposes, and prohibit the sale of protected health information without individual authorization.
 - Expand a patient’s right to receive electronic copies of his or her medical records. Further, when patients pay out-of-pocket in full, the patients can instruct their provider not to share their patient-care records with their insurance companies.
 - Require covered entities to modify and redistribute their notices of privacy practices.



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- Modify the individual authorization and other requirements. These modifications are intended to facilitate research and disclosure of child immunization proof to schools, and to enable access to decedent information by family members or others. In effect, the rule makes it easier for parents and others to give permission to share proof of a child's immunization with a school and gives covered entities and business associates up to one year after the 180-day compliance date to modify contracts to comply with the rule.
 - Adopt the additional HITECH Act enhancements to the HIPAA Enforcement Rule, such as the provisions addressing enforcement of noncompliance with the HIPAA Rules due to willful neglect. These changes strengthen the Health Information Technology for Economic and Clinical Health (HITECH) Breach Notification requirements, by clarifying when breaches of unsecured health information must be reported to HHS.
2. **Changes to the HIPAA Enforcement Rule.** These changes increase the tiered civil money penalty structure provided by the HITECH Act. Penalties are increased for noncompliance based on the level of negligence with a maximum penalty of \$1.5 million per violation.
 3. **New rule concerning the "breach notification" for Unsecured Protected Health Information.** The final rule replaces the breach notification rule's "harm" threshold with a more objective standard. The new breach notification requirements are intended to clarify when breaches of unsecured health information must be reported to HHS.
 4. **Modification to the HIPAA Privacy Rule.** As required by the Genetic Information Nondiscrimination Act (GINA), the modification to the HIPAA Privacy Rule prohibits most health plans from using or disclosing genetic information for underwriting purposes.

The final rule is effective on March 26, 2013. Covered entities and business associates must comply with the applicable requirements by September 23, 2013.

If you have questions about how to ensure compliance with HIPAA, HITECH or other health care related laws, please contact a member of Eastman & Smith's Health Care Practice Group at 419-241-6000 or visit our website at www.eastmansmith.com.

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