

Hall, Render, Killian, Heath & Lyman is a full service health law firm with offices in Indiana, Kentucky, Michigan and Wisconsin. Since the firm was founded by William S. Hall in 1967, Hall Render has focused its practice primarily in the area of health law and is now recognized as one of the nation's preeminent health law firms serving clients in multiple states. For more information about the firm please visit us at www.hallrender.com.

Office Locations
Indiana Offices
One American Square
Suite 2000
Indianapolis, IN 46282
(317) 633-4884

8402 Harcourt Road
Suite 820
Indianapolis, IN 46260
(317) 871-6222

Kentucky Office
614 West Main Street
Suite 4000
Louisville, KY 40202
(502) 568-1890

Michigan Offices
Columbia Center, Suite 315
201 West Big Beaver Road
Troy, MI 48084
(248) 740-7505

2369 Woodlake Drive, Suite
280
Okemos, MI 48864
(517) 703-0921

Wisconsin Office
111 East Kilbourn Avenue
Suite 1300
Milwaukee, WI 53202
(414) 721-0442

Contact Us
hallrender@hallrender.com

CHANGES TO ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

On February 17, 2009, President Obama signed into law the American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). Title XIII of the Recovery Act is known as the Health Information Technology for Economic and Clinical Health Act ("HITECH"). Among other provisions, HITECH makes several changes to the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Due to the significance of those changes, we will be issuing a series of Alerts providing an analysis of each of those changes in detail. This is the sixth in a series of seven such Alerts.

One of the more interesting changes made by HITECH regards the requirement that covered entities provide individuals with an accounting of disclosures of protected health information ("PHI"). Currently, HIPAA provides each individual with the right to receive an accounting of disclosures of PHI made by a covered entity in the six (6) years prior to the date of the individual's request. However, that right does not extend to several types of disclosures, including disclosures for treatment, payment, and health care operations. The primary purpose for that exclusion is that disclosures for treatment, payment, and health care operations are necessary for the day-to-day operation of a covered entity and occur in great numbers, so tracking them could be unduly burdensome on a covered entity.

In light of the increasing use of electronic medical record technology, HITECH changes the accounting for disclosures requirement to include even disclosures for treatment, payment, and health care operations. Under HITECH, if a covered entity utilizes an electronic health record ("EHR"), the covered entity will be required to account for disclosures for treatment, payment, and health care operations. Upon receiving a request for such a disclosure, the covered entity will be required to provide individuals with an accounting of disclosures of PHI which occurred within the three (3) years prior to the date of the request. Note that the time period to which the accounting requirement applies is half the length of time as currently exists under HIPAA.

The effective date of this new requirement varies depending on when the covered entity obtains its EHR. For covered entities that had an EHR as of January 1, 2009, the effective date is January 1, 2014. For covered entities that acquire an EHR after January 1, 2009, the effective date is the later of January 1, 2011, or the date the EHR is acquired. The Secretary of Health and Human Services ("Secretary") may delay these dates by up to two (2) years, if necessary. The reason for the different effective dates is based on

the assumption that EHRs acquired prior to January 1, 2009 likely will not have the technical capability to account for disclosures for treatment, payment, and health care operations. Therefore, covered entities that had EHRs as of January 1, 2009 are given additional time to either update their existing EHR or acquire a new EHR.

HITECH also addresses the impact of this new accounting requirement on business associates. HITECH provides covered entities with two (2) methods to account for disclosures by business associates. First, the covered entity may simply include disclosures made by a business associate in the covered entity's own accounting. Alternatively, the covered entity may account only for its own disclosures and include a list of all business associates and their contact information to the individual. With the second method, if a business associate of a covered entity receives a request for an accounting of disclosures directly from an individual, the business associate is required to provide the accounting to the individual directly.

With respect to the content of the accounting, HITECH requires the Secretary to adopt regulations that take into consideration both the individual's interest in knowing how PHI is used and disclosed, and the administrative burdens to covered entities in providing the accounting. The Secretary is required to issue those regulations by June 18, 2010. Therefore, additional information regarding this new requirement is forthcoming.

This change to HIPAA is an important change that will require covered entities and their business associates to revise their policies, procedures, and practices as well as their Business Associate Agreements. Covered entities affected by these changes should determine which effective date applies to their organization and start planning to make the necessary adjustments so that they will be in full compliance by the applicable deadlines. If your organization has questions about these changes or needs assistance assessing HIPAA compliance and implementing the changes, please contact us.

To register for the complete Impact Series: HIPAA goes HITECH, please visit:

hallrender.com/impact

HIPAA Impact Series: HIPAA goes HITECH

1. Increased Enforcement (3/30/09)
2. Breach Notification Requirements (04/13/09)
3. Changes to Business Associate Agreements and Duties (04/27/09)
4. Changes to the Minimum Necessary Rule (05/11/2009)
5. Changes to Fundraising, Marketing, and other Restrictions on Disclosure (05/25/09)
6. Changes to Accounting of Disclosures Requirements (06/08/09)
7. How Changes to HIPAA Impacts HIEs, RHIOs, etc. (06/22/09)

If you need additional information about this topic, please contact your regular Hall Render attorney or:

Mark J. Swearingen at (317) 977-1458 or mswearingen@hallrender.com

This information is intended for general information purposes only and does not and is not intended to constitute legal advice. The reader must consult with legal counsel to determine how laws or decisions discussed herein apply to the reader's specific circumstances.

Changes to accounting of disclosures of protected Health Information is the sixth of seven articles in the HIPAA goes HITECH series. To register for future Hall Render Impact Series articles, please visit hallrender.com/impact

as distributed June 12, 2009

HIPAA goes HITECH authors:

- Elizabeth Callahan-Morris
- Charise R. Frazier
- Monica C. Hocum
- Margaret Marchak
- Melissa L. Markey
- Mark J. Swearingen