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CLIENT ALERT

HIPAA Compliance Deadline is Coming!

In February, 2013, we sent a "Client Alert" regarding the Health Insurance Portability and Accountability Act ("HIPAA") final omnibus regulations which were issued on January 25, 2013. (<http://www.ottenwesslaw.com/Publications/HIPAA-Recharged-HHS-Releases-Omnibus-Final-Rule.pdf>). The final regulations (the "Final Rule") include significant changes that affect covered entities, **including group health plans and the employers that sponsor such plans**, as well as business associates. Covered entities and business associates generally should be prepared to implement and comply with the new rules beginning **September 23, 2013**.

The Final Rule modified many aspects of the HIPAA regulations, including several provisions that impact covered entities and business associates. For instance, under the Final Rule, business associates are now directly liable for the failure to comply with certain HIPAA privacy and security requirements. Moreover, the definition of business associate generally has been expanded to include vendors and subcontractors of business associates that create, receive, maintain or transmit Protected Health Information ("PHI"). The Final Rule also modified the definition of "breach," which essentially imposes heightened breach notification requirements. Under the heightened breach notification requirements, a covered entity is obligated to notify affected individuals of any breach, unless a risk assessment demonstrates a "low probability" that the PHI has been compromised. In addition, certain provisions of business associate agreements ("BAAs"), breach notifications and notices of privacy practices must be modified to comply with several new content requirements set forth in the Final Rule. Perhaps most importantly, there is a stricter enforcement scheme that requires HHS to investigate any complaint when a review of the facts indicates a possible violation due to willful neglect.

For covered entities and business associates the compliance date for the Final Rule is **September 23, 2013**. All covered entities and business associates must take the opportunity during what little time is left to comply to ensure their HIPAA policies and procedures and contracts are current and account for the modifications to the HIPAA regulations, as a failure to comply with HIPAA could now result in much more substantial fines. Some of the updates to your HIPAA compliance plan with which all covered entities and business associates, if applicable, must comply by September 23, 2013 are:

1. Business associate agreements must be amended to comply with the new final rule;

2. Notices of Privacy Practices for covered entities, marketing authorizations and fundraising policies and procedures must be amended to include the new elements of the rule;
3. Covered entities should inventory their business associates to determine if any one may be considered an agent subjecting the covered entity to the risk of expanded liability, notify them of the changes to come under the new rules, and insure that a properly updated business associate agreement is in place;
4. Business associates must have their own HIPAA compliance program in place, which should include compliance with the Privacy Rule and the Security Rule;
5. Business associates must revise their contracts with their subcontractors to include the elements required for business associate agreements;
6. Both covered entities and business associates should revise (or develop) policies regarding breach notification to conduct risk assessments and address the four factors in determining whether protected health information has been compromised.

If you have questions regarding these changes to the HIPAA rules, or any health law matter, please contact Christopher Allman at callman@ottenwesslaw.com, or Stephanie Ottenwess at sottenwess@ottenwesslaw.com.

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