

January 2013

A Detailed Analysis of Changes to HIPAA and the Implications for Healthcare Providers and Others in the Healthcare Industry

On Friday, January 25, 2013, the Office for Civil Rights (“OCR”) of the U.S. Department of Health and Human Services (“HHS”) published a final rule modifying the HIPAA Privacy, Security, and Enforcement Rules (the “Final Rule”) as mandated by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act. Many of these modifications were set forth in a Notice of Proposed Rulemaking (“NPRM”) dated July 14, 2010, although the Final Rule does not adopt all the proposals as described in the NPRM.

The Final Rule also modifies the Breach Notification Rule, which has been effective as an interim final rule since September 23, 2009. Finally, the Final Rule strengthens privacy protections for certain genetic information under the Genetic Information Nondiscrimination Act (“GINA”).

The Final Rule makes significant changes to HIPAA and the potential penalties for violating HIPAA. The Final Rule also expands the scope of HIPAA, meaning that some businesses that were not subject to HIPAA before the Final Rule now have HIPAA compliance obligations and can be subject to enforcement action for noncompliance. Healthcare providers and others in the healthcare industry should be aware of these changes and how they will apply to their particular business.

The Final Rule is effective on March 26, 2013, and Covered Entities and Business Associates must comply with the Final Rule by September 23, 2013.

Changes to the HIPAA Security Rule

Background: The HIPAA Security Rule protects electronic PHI by requiring Covered Entities to implement certain administrative, physical, and technical safeguards surrounding electronic PHI. Like the Privacy Rule, the Security Rule initially only applied to Covered Entities, but the HITECH Act provided that Business Associates must also comply with the Security Rule.

Modifications: The Final Rule confirms that Business Associates must comply with the Security Rule and implement appropriate administrative, physical, and technical safeguards to protect electronic PHI. The Final Rule also clarifies that a Business Associate must require a subcontractor to appropriately protect any electronic PHI provided to the subcontractor by Business Associate.

If you have any questions about the Final Rule or HIPAA please contact [Jill M. Girardeau](#), the principal drafter of this alert, [Sarah B. Crotts](#), [Deonys de Cárdenas](#), [Tracy Field](#), or any member of Womble Carlyle’s [Healthcare Industry Team](#).

Womble Carlyle client alerts are intended to provide general information about significant legal developments and should not be construed as legal advice regarding any specific facts and circumstances, nor should they be construed as advertisements for legal services.

IRS CIRCULAR 230 NOTICE: *To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).*