

Ask an Expert

Stay Out of Jail and Avoid Massive Fines by Complying With the New HIPAA Rules

Does your business receive, transmit, compile, aggregate or interact with any medical or health information in electronic form? Or, does your business come into contact with any such information indirectly as a result of performing services for, or hosting software on behalf of, a customer that receives such information?

If you answered yes to any of these questions and you haven't familiarized yourself with the new Omnibus Rule promulgated under the Health Insurance Accountability and Portability Act of 1996 ("HIPAA") which took effect earlier this year, you should know that violations carry fines of up to \$1.5 million and possibly even jail time.

The first step is to determine whether you are subject to HIPAA, whether as a "covered entity" (i.e., a health care provider conducting transactions in electronic form, a health care clearinghouse such as those performing billing and claim-related services, or a health plan) -- or as a "business associate" (i.e., a subcontractor or vendor to a "covered entity"). Covered entities should already be in compliance with most of HIPAA's newest requirements while subcontractors have until September 23, 2013.

HIPAA is a federal law that governs the use and safeguarding of individually identifiable health information sent electronically and includes eighteen identifiers, such as name, date of birth, social security number, phone number, email address, health plan or medical record numbers that can identify a particular person.

A suspected violation or breach of a person's health information may result in a federal investigation of your books, records and policies to ensure compliance. Furthermore, the breach prompts notification to the affected individual(s), subjecting you to potential civil liability in private lawsuits.

Accordingly, it is important to place into effect certain HIPAA required technical, physical and administrative safeguards. These safeguards include, but are not limited to, (i) written policies and procedures regarding the use and disclosure of health information; (ii) education and awareness training for an entity's employees and workforce members; (iii)

contingency plans for backing up and responding to disasters effecting health information; (iv) facility, workstation and device controls; and (v) security measures such as encryption when transmitting such health information.

HIPAA also requires covered entities to enter into business associate contracts with its subcontractors, vendors and anyone else that handles health information on its behalf.

These contracts should clearly define the intended use and

disclosure of health information and provide the covered entity with satisfactory assurances that the subcontractor complies with HIPAA. In addition, the contract must provide the covered entity termination rights in the event of a HIPAA violation.

Failure to place into effect the required safeguards, policies, training and other procedures required under HIPAA could have dire consequences to your business and finances if not planned for and handled

properly. Aside from the potential distractions to your business from a compliance audit, potential resulting fines and civil liability, failure to understand your obligations under HIPAA and to plan accordingly may make customers, consumers and partners reluctant to do business with your organization.



Frank Lauletta, Esq.

For more information regarding HIPAA and the proper steps for compliance, contact either Frank Lauletta, Esq. or Randy Ford, Esq. at Lauletta Birnbaum, LLC at 856.232.1600 or via email: flauletta@lauletta.com or rford@lauletta.com.

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