

HEALTH LAW ALERT

TO: Clients and Friends

FROM: Burr & Forman Health Care Practice Group

DATE: February 2010

RE: HITECH Act Compliance: Is Your Organization Ready?

The compliance deadline for many provisions of the Health Information Technology for Economic and Clinical Health Act ("HITECH Act")¹ is rapidly approaching. Among other things, the HITECH Act imposes new notification requirements for breaches involving unsecured protected health information ("PHI") and significantly expands the scope and reach of the HIPAA Privacy and Security Rules ("HIPAA"). Many provisions of the HITECH Act take effect on February 17, 2010. As this deadline approaches, all HIPAA covered entities² and business associates³ should take note of their new legal obligations imposed by the HITECH Act and review their compliance status.

For example, if you are a HIPAA covered entity, you will need to amend any existing business associate agreements to incorporate the applicable provisions of the HITECH Act, including the rights and responsibilities of the parties with regard to the new breach notification requirements. You should also implement new HIPAA policies and procedures to ensure your own compliance with the breach notification requirements. In addition, it will be important for your organization to review and comply with other HITECH Act changes affecting individuals' PHI rights (accounting, access and restriction), minimum necessary obligations, marketing/fundraising communications, etc.

The HITECH Act has also significantly changed how HIPAA applies to business associates. For example, business associates will be now required to directly comply with the Security Rule administrative, physical and technical safeguards – including implementing policies and procedures documenting such compliance. For the first time, business associates will also be subject to enforcement actions and penalties for HIPAA violations.

Accordingly, both covered entities and business associates need to closely review the HITECH Act requirements and take immediate action to satisfy their new HIPAA obligations and responsibilities.

¹ The HITECH Act was enacted as part of the economic stimulus legislation, the American Recovery and Reinvestment Act of 2009 ("ARRA"), Public Law No. 111-5.

² A covered entity is a health plan, health care clearinghouse, or a health care provider who transmits any health information in electronic form in connection with a HIPAA-covered transaction.

³ A business associate is a person who on behalf of a covered entity (but not as a member of the workforce of the covered entity) performs services involving the use or disclosure of individually identifiable health information.

In the event that you have any questions about compliance with the HITECH Act and/or your health care practice in general, please feel free to contact any of the following attorneys in our Health Care Practice Group.

Birmingham, Alabama

Howard Bogard
(205) 458-5416
hbogard@burr.com

Atlanta, Georgia

Chip Collins
(404) 685-4266
wcollins@burr.com

Mobile, Alabama

Bill Daniels
(251) 345-8236
bdaniels@burr.com

Jackson, Mississippi

Eric Hatten
(601) 709-3442
ehatten@burr.com

Montgomery, Alabama

Jack Mooresmith
(334) 387-2072
jmooresm@burr.com

Nashville, Tennessee

Kevin Doherty
(615) 724-3211
kdoherly@burr.com

Winter Park/Orlando, Florida

J. Lindsay Builder
(407) 647-7670
lindsay.builder@burr.com

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