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Employee Benefits

Alert



HITECH Enhances HIPAA

This year's economic stimulus legislation requires plan sponsors to renew their focus on health information privacy policies and procedures. The Health Information Technology for Economic and Clinical Health Act (HITECH) expands health plan privacy and security requirements and strengthens enforcement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

HIPAA restricts the use and disclosure of individually identifiable health information (known as "protected health information" or "PHI") maintained by "covered entities." "Covered entities" include employer-sponsored health plans such as medical, dental, prescription drug, health flexible spending arrangements, and vision plans. Plans must have HIPAA-compliant information privacy policies and procedures designed to comply with HIPAA. HIPAA also requires plans to take steps to keep electronic PHI secure.

HITECH expands the health information privacy and security duties for covered entities. Plan sponsors should be aware of the following changes under HITECH.

- **Enforcement.** The Department of Health and Human Services (HHS) may bring criminal and civil actions to enforce HIPAA. State attorneys general also are

authorized to enforce HIPAA. Employees of a plan sponsor may be held criminally liable for privacy and security breaches. HITECH also increased the maximum penalty for HIPAA violations to \$1.5 million.

- **Plan Sponsor Response:** *Plan sponsors should review and update their HIPAA privacy and security policies and procedures. Employees should receive HIPAA privacy and security training. Written procedures for reporting and mitigating privacy and security breaches should be implemented.*

- **Notice of Unauthorized "Unsecured" PHI Disclosures.** An unauthorized use or disclosure of and individual's "unsecured" PHI must be promptly reported to the individual. PHI is "unsecured" if it is not secured by a method specified by HHS regulations. If a breach affects more than 500 individuals, notice must be provided to media outlets.

- **Plan Sponsor Response:** *Plan sponsors should secure PHI as required by HHS regulations and adopt policies and procedures for promptly issuing breach notices required by HITECH.*

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■ **Accounting of Disclosures.** Under HITECH, individuals may request a report showing all electronic uses and disclosures of PHI. Before HITECH, an accounting of uses and disclosures for payment, treatment and healthcare operations was not required.

○ **Plan Sponsor Response:** *Plan sponsors should update their HIPAA privacy policies and procedures and HIPAA forms to allow for the new accounting right. Information technology systems must track and record electronic uses and disclosures of PHI.*

■ **Access to PHI.** Individuals may request electronic access to electronic PHI and may request the electronic transmission of electronic PHI to a third party.

○ **Plan Sponsor Response:** *Plan sponsors should update their HIPAA privacy policies and procedures to provide for the new electronic access and transmission rights.*

■ **Business Associates.** HITECH expands the definition of the term “business associate” to include any entity that has routine access to PHI or provides data transmission services to a covered entity. HITECH also makes business associates subject to HIPAA civil and criminal penalties.

○ **Plan Sponsor Response:** *Plan sponsors should ensure that all business associates have entered into a business associate agreement with the plan. Business associate agreements should be reviewed and updated.*

The new HITECH requirements generally become effective on Feb. 17, 2010. If you need assistance complying with HITECH and HIPAA, please contact any member of the Williams Mullen Employee Benefits Group.

