

HIPAA Privacy – GINA & Stimulus Law Changes

This FYI provides information about some of the HIPAA privacy changes for employer health plans due to the American Recovery and Reinvestment Act of 2009 ("ARRA") which was signed into law on February 17, 2009. It also addresses changes made by the Genetic Information Nondiscrimination Act of 2008 ("GINA") which was signed into law on May 21, 2008. ("HIPAA" stands for the Health Insurance Portability and Accountability Act of 1996, as amended.)

Here are some of the main changes for HIPAA privacy for employer plans due to these laws:

- ARRA increases enforcement of HIPAA privacy provisions effective immediately. One of the changes is to substantially increase the penalties for violations. For example, violations which are due to reasonable cause and not to willful neglect, are now subject to a penalty for each violation of at least \$1,000 per violation, not to exceed \$50,000 per violation. The law includes a cap on penalties.
- ARRA changes the "minimum necessary" standard under the privacy rules.
- ARRA includes new accounting requirements for disclosures of protected health information.
- ARRA adds significant new notice obligations for a breach of HIPAA privacy obligations.
- ARRA provides that business associates have direct responsibility for HIPAA privacy under the law, rather than only through business associate agreements. For business associates, this means gearing up for HIPAA compliance.

There are many other changes to HIPAA privacy in ARRA. Some of these provisions are effective immediately and some have delayed effective dates.

- GINA includes health plan limitations regarding use of genetic information. For purposes of HIPAA privacy, the privacy regulations will be revised to treat genetic information as health information under the privacy law. In addition, use of genetic information for underwriting purposes is not permitted. The provisions of GINA relating to HIPAA privacy policies of employer health plans generally are effective May 21, 2009.

What should employers do?

- Check with your attorney to update your HIPAA compliance and documentation.
- Revise systems and internal operations to reflect the requirements of the new laws.

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