

February 18, 2013

Analysis of Final HIPAA Omnibus Rule: Notice of Privacy Practices

This is the eighth and final in a series of bulletins analyzing the changes of the HIPAA Omnibus Rule (Final Rule) released January 17, 2013, and published January 25, 2013 (78 Fed. Reg. 5566). The changes in the Final Rule will require modifications to your notice of privacy practices.

Notice of Privacy Practices

As a result of the changes in the Final Rules, covered entities will be required to revise their notice of privacy practices. Some revisions may be applicable only to providers or only to health plans; however, most are applicable to all covered entities. The following provisions must be included in the notice of privacy practices:

- ▶ *All covered entities* must include the following in their notice of privacy practices:
 - A statement that the following uses and disclosures will be made only with authorization from the individual:
 - ✓ uses and disclosures for marketing purposes;
 - ✓ uses and disclosures that constitute the sale of PHI;
 - ✓ most uses and disclosures of psychotherapy notes (if the covered entity maintains psychotherapy notes); and
 - ✓ other uses and disclosures not described in the notice
 - A statement regarding an individual's right to notice in the event of a breach
 - Notice of the right to opt out of fundraising communications (if the covered entity conducts fundraising)
- ▶ *Health care providers* must include in their notice of privacy practices a statement about an individual's right to restrict disclosures of protected health information to health plans if an individual has paid for services out of pocket in full.
- ▶ *Health plans* (except for long-term care plans) must include in their notice of privacy practices a statement that the health plan is prohibited from using or disclosing genetic information for underwriting purposes.

The previously required statement that the covered entity may contact the individual with appointment reminders or information about treatment alternatives or other health-related benefits or services may, at the option of the covered entity, be deleted from the notice.

All covered entities must revise their notice of privacy practices by September 23, 2013. The revisions constitute a material modification to the notice, and therefore the revised notice must be made available to individuals as follows:

- ▶ *Health care providers:* The revised notice must be available to existing patients upon request, and must be posted both to the provider's website (if they have a website) and in a prominent location on the premises. New patients must be provided with a copy of the revised notice.
- ▶ *Health plans:* The revised notice must either (i) be posted to the health plan's website and all members notified of the revisions in the next annual mailing, or (ii) if it is not posted to a website, the revised notice or information about the material changes and how to obtain the revised notice must be distributed to all members within 60 days of the revisions.

Future Developments

The changes described in this series of e-Alerts are the major changes required by the Final Rule. However, the Final Rule is lengthy and complex, and there are additional, less significant changes included in the Final Rule that may affect a covered entity's compliance program. Therefore, we recommend covered entities review the Final Rule carefully, and compare the changes to their own policies and procedures to determine what revisions will be required.

In addition, in the Department of Health and Human Services (HHS) description and commentary that accompanies the Final Rule, HHS noted that it would continue to review a number of issues. As a result, further modifications or clarifications to the Final Rule are likely. Covered entities should watch for these future developments.

Finally, it should be noted that some requirements of the Health Information for Economic and Clinical Health (HITECH) Act (e.g., the accounting requirements for electronic health records and the minimum necessary standards) were not addressed in the Final Rule, so additional rules will be forthcoming. Covered entities should also watch for announcements from the Centers for Medicare and Medicaid Services (CMS) for additional rulemaking.

Resources

The following additional resources are available to provide you with further details on the requirements of the Final Rule; information on additional changes, clarifications and new rules; and tools to help you become compliant with the Final Rule by **the compliance date, which is September 23, 2013.**

- ▶ Bricker & Eckler's **FREE** indexed section-by-section compilation of the privacy, security and breach rules, including the Final Rule, can be found [here](#).
- ▶ Our series of **FREE** joint e-Alerts on the Final Rule can be found [here](#). Register for further eAlerts [here](#).
- ▶ Our **FREE** webinars – a two-part series – on the Final Rule are scheduled for February 19 and 21, 2013. Register by clicking [here](#).
- ▶ A new comprehensive online compliance and audit program offered by Bricker & Eckler, INCompliance and QMCG, which will be released shortly. Watch for our announcement [here](#). This new program is a subscription service that includes the following:
 - Sample policies and procedures necessary to comply with the privacy, security and breach rules, including the Final Rule
 - Checklists, forms and other helpful tools to assist you with documenting your compliance program
 - A self-audit program which contains many helpful tools, tips and checklists to assist you in auditing your HIPAA compliance program
 - Three hours of consulting time to assist you with the modifications required to comply with the Final Rule, or your other HIPAA-compliance questions.
- ▶ INCompliance offers customized HIPAA consulting services, including audits, breach investigations, training programs and compliance program development to help you maintain compliance in today's rapidly changing health care environment. [Click here](#) for additional information on our services.

This joint e-Alert from Bricker & Eckler and INCompliance is the eighth and final in a series analyzing the final HIPAA Omnibus Rule.

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