



HEFFERNAN INSURANCE BROKERS

A Member of the Heffernan Group

DATE: October 19, 2009
TO: Our Valued Client Partners & Friends
FROM: HIB Account Team
RE: LEGISLATIVE UPDATE 2009-16
HITECH Compliance Action Items: Revised HIPAA business Associate Agreement

We are pleased to bring you our **Legislative Update 2009-16: HITECH Compliance Action Items: Revised HIPAA Business Associate Agreement**, an update on previous information we have provided. In this Legislative Update we address expanded duties regarding notices which must be provided if there were to be a breach of security of protected health information. Action is required of those entities that have this type of Business Associate relationship. Please refer below to see if this applies to you.

We hope you find this informative, and please, if you have any questions, contact your HIB Account Team for assistance.

**HITECH Compliance Action Items:
Revised HIPAA business Associate Agreement**

In Legislative Update 2009-14, we discussed the newly proposed duties imposed on Covered Entities (and Business Associates) to provide notice to all affected health plan participants in the event of a breach of security of unsecured protected health information. Please also refer to my original Legislative Update 2009-10 on the Health Information Technology Economic and Clinical Health Act (HITECH) discussing this significant amendment to the Health Insurance Portability and Accountability Act (HIPAA) and its Privacy Rules.

BUSINESS ASSOCIATE AGREEMENTS

As a part of HITECH, Business Associates now have expanded duties and obligations to Covered Entities with regard to potential and actual breaches of security involving unsecured protected health information. Based on the interim regulations (<http://edocket.access.gpo.gov/2009/pdf/E9-20169.pdf>) released on August 24, 2009, Business Associates as well as Covered Entities (e.g. health plans) must comply with the breach notification rules as of September 23, 2009. It also is worth noting that regulators have agreed to defer enforcement of these new rules under most circumstances until February 2010 to allow stakeholders time to comply with these new rules. Plan Sponsors must modify any existing Business Associate Agreements to reflect these new rules.

DEFINITION A BUSINESS ASSOCIATE

A Business Associate is a person who, on behalf of a Covered Entity or an organized health care arrangement (OHCA) in which the Covered Entity participates, and in a capacity other than as a member of the Covered Entity's workforce:

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- Performs or assists in performing:
 - A function or activity involving the use or disclosure of individually identifiable health information (including claims processing or administration; data analysis, processing or administration; utilization review; quality assurance; billing; benefit management; practice management; and repricing); or,
 - Any other function or activity regulated by HIPAA's administrative simplification rules; or,
- Provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services, if the performance of such services involves giving the service provider access to individually identifiable health information (45 CFR 160.103).

ACTION ITEM

We recommend that Covered Entities with Business Associate Agreements currently in effect review the existing agreements and amend or replace them at this time.

SAMPLE REVISED BUSINESS ASSOCIATE AGREEMENT AND SAMPLE AMENDMENT

Although enforcement is deferred for the time being, it is prudent for Plan Sponsors to implement the HITECH compliance requirements as soon as possible. To assist in that implementation, we have attached a sample Business Associate Agreement incorporating the HITECH breach notification rules applicable to Business Associates. We also have attached a sample Amendment for use in amending existing Business Associate Agreements.

For further information on the HITECH Regulations, please visit my online Client Library at

<http://www.abferisa.com>.

To access archived Legislative Updates please log into www.heffgroup.com and clicking on the link for HIB Client Community. If you need information on your Username and Password please contact your HIB Account Team.

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