



HITECH Compliance Required Soon

The Health Information Technology for Economic and Clinical Health Act (HITECH), enacted as part of the American Recovery and Reinvestment Act of 2009 (ARRA), made significant changes to the privacy and security requirements of the Health Insurance Portability and Accountability Act (HIPAA). A number of HITECH provisions, which affect both covered health plans and business associates, will take effect or become subject to enforcement this month.

Background

Prior to ARRA, HIPAA imposed privacy and security requirements only on covered entities, i.e., health care providers, health plans and health care data clearinghouses. Their business associates (i.e., service providers with access to the plan's PHI) were indirectly regulated through agreements with the covered entities. HITECH changed that by making business associates directly responsible for complying with HIPAA privacy and security rules. (See our April 27, 2009 [For Your Information](#).) HITECH also added new breach notification requirements for covered entities and business associates, and significantly increased penalties for noncompliance.

Compliance and Enforcement Deadlines Near

The deadline for complying with HITECH requirements affecting business associates is February 17, 2010. Covered entities should review their existing business associate agreements to ensure that they contain provisions that will enable them to comply with HITECH's new rules. It is particularly important that the agreement appropriately describes the roles and responsibilities of each party with respect to the breach notification requirements. Plan sponsors may also wish to request confirmation that their business associates are now operating in accordance with HIPAA's security provisions – that is, they have conducted formal risk assessments, have appointed a security officer, have written security policies and procedures in place, and provide appropriate training to employees with access to protected health information.

Although HITECH's new breach notification requirements took effect September 23, 2009, HHS adopted a non-enforcement policy allowing HIPAA-covered entities and business associates an additional five months – or until February 22, 2010 – to come into compliance with these provisions. (See our September 4, 2009 [For Your Information](#).) Action should be taken immediately to ensure that appropriate procedures are in place by that deadline.

Buck's consultants would be pleased to review HITECH requirements with you and to assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.