

Don't Forget: Business Associate Agreement Revisions Due September 22, 2014

In early 2013, the Department of Health & Human Services (HHS) published omnibus regulations under HIPAA. These final rules made several changes to the HIPAA administrative simplification rules requiring updates to contracts between covered entities and their business associates. Generally the compliance date for the new rules was September 23, 2013. However, a special transition rule allows covered entities until September 22, 2014 to revise business associate agreements in certain cases.

Background

Business associates are generally entities or people performing activities that involve use or disclosure of protected health information (PHI) for or on behalf of a covered entity. Whether an entity is a business associate is role and activity based, i.e., if it creates, receives, maintains, or transmits PHI on behalf of a covered entity (see our [March 8, 2013 For Your Information](#)). Examples of common business associates include:

- Insurers and HMOs covered by ASO agreements to provide claims processing and medical management decisions
- Third party vendors (e.g., COBRA, disease management, utilization review)
- Consultants and actuaries
- Pharmacy benefit managers
- Accountants
- Data storage companies (digital or hard copy)

Business associate agreements must include language about compliance with the HIPAA privacy and security rule and the HITECH Act's privacy provisions. Additionally, the business associate must agree to report breaches of unsecured PHI to the covered entity, and ensure that subcontractors that create or receive PHI on behalf of a business associate agree to the same restrictions with respect to PHI that applies to the business associate.

Compliance Dates

Most of the provisions in the omnibus rules were effective September 23, 2013. However, there is a transition period for covered entities and business associates to amend their business associate agreements to comply with the final regulations.

Status of business associate agreement	Actions	Compliance date
HIPAA-compliant agreement in effect before 1/25/2013	Renewed or modified on or after 1/25/2013 and before 3/26/2013	If “evergreen” or automatically renewed (i.e., no changes), no later than 9/22/2014
	Renewed or modified on or after 9/23/2013	Earlier of renewal/modification date or 9/22/2014
New agreement executed on or after 9/23/2013		Effective date of the agreement

Next Steps

Covered entities should inventory and amend their business associate agreements to reflect these recent regulatory changes by the appropriate compliance date. HHS has provided [sample language](#), but notes that its use is not required for compliance and may be changed to reflect accurately the business relationship between the parties.

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