
employee benefits lawflash

June 25, 2014

HIPAA/HITECH Business Associate Agreements: The Home Stretch

The one-year transition rule expires on September 22, 2014.

The final regulations under the HIPAA Privacy, Security, and Enforcement Rules as amended by HITECH,¹ make several changes, including modifying the requirements for business associate agreements (BAAs).² The final regulations recognize that renegotiating and amending existing BAAs for HITECH compliance may be a burdensome task and include a one-year transition rule for entities that had existing BAAs in effect as of January 25, 2013. That one-year transition period began on September 23, 2013 and expires on September 22, 2014.³

Applicability

The transition rule gives covered entities and business associates, including business associates and sub-business associates (Business Associates), operating under BAAs that were in place prior to January 25, 2013 (including evergreen agreements) until September 22, 2014 to amend their BAAs to comply with the HITECH requirements. However, this relief is only available if the existing BAA was not renewed or modified from March 26, 2013 to September 23, 2013. If a BAA was renewed or modified during this period, the HITECH requirements should have been added at that time. Notably, this transition rule does not extend the time period for compliance with the underlying HITECH requirements; rather, it is a limited extension for renegotiating and amending BAAs.

Effective Date

Covered entities and Business Associates that rely on the transition rule must update their BAAs on the earlier of (i) the date that the existing BAA is renewed or modified on or after September 23, 2013 or (ii) September 22, 2014. Thus, all BAAs must be HITECH-compliant by September 22, 2014.

Action Items

BAAs that were in place before January 25, 2013 need to be reviewed, renegotiated, and amended, if applicable, by September 22, 2014. The necessary amendments may include, but are not limited to, (i) extension of Security Rule and certain Privacy Rule requirements to Business Associates, (ii) breach notification provisions, and (iii) modified access to Protected Health Information, minimum necessary standard, and termination provisions.

1. "HIPAA" stands for the Health Insurance Portability and Accountability Act, and "HITECH" stands for the Health Information Technology for Economic and Clinical Health Act.

2. For a comprehensive review of the final regulations, please see our January 25, 2013 LawFlash, "Final Rules Under HIPAA/HITECH Impact Employer Plans," available at http://www.morganlewis.com/pubs/EB_LF_FinalRulesUnderHIPAA-HITECH_25jan13.

3. See 45 C.F.R. 164.532(d)-(e) for the details of the transition rule.

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