

HITECH For Brokers Is Not Just For Geeks

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Brokers on the Hook for Compliance on February 17, 2010

By *Cathy Miller*, [Business Writer](#)

Brokers may soon be pulling out their wallets if they do not comply with the major changes to the Health Insurance Portability & Accountability Act (HIPAA) privacy and security requirements. New rules for [business associates](#) are in effect on February 17, 2010. That includes you – the broker.

Blame It on Health Care Reform

With so much focus in the last year on health care reform, this particular legislation may have gone unnoticed. A part of the American Recovery and Reinvestment Act of 2009 (the “Stimulus Bill”) signed by President Obama on February 17, 2009, created the Health Information Technology for Economic and Clinical Health Act (the “[HITECH Act](#)”).

To reduce health care costs and improve care, the goal is for the creation of a national health technology infrastructure. Securing protected health information ([PHI](#)) is a critical component.

HIPAA With Teeth

Up to this point, many [covered entities](#) and business associates likened HIPAA to Y2K – much ado about nothing. Well, not anymore. HITECH significantly expands the HIPAA privacy and security rules. These are just a few of the changes:

- **New HIPAA rules for Business Associates (BAs)** – subject to the same privacy and security rules as Covered Entities (CEs) including civil and criminal penalties
- **Stricter Enforcements** – Civil penalties for privacy or security violations increased to a range of \$100 to \$50,000 per violation, with annual caps ranging from \$25,000 to \$1.5 million
- **Legal Action by State Attorney Generals** – allows legal action for violations of privacy and security regulations –Note: Connecticut has already taken [action](#) against Health Net
- **New Breach Notification Requirements** – requires CE to notify an individual within 60 days of discovery of the breach of privacy or security (BAs also have notification requirements for a breach)

HITECH created additional privacy requirements that affect both CE and BAs. Like any legislation, final regulations are a work in progress.

BA Agreements

You or your brokerage firm may have already received revised or new [Business Associate \(BA\) Agreements](#) from insurance carriers. Legal counsel should review the Agreements for interpretation. It is likely that the new Agreements contain greater liability for brokers.

If you have BA Agreements with self-funded clients, more than likely, they need revising. Have your legal counsel review them for compliance.

With the introduction of HIPAA, many brokers signed BA Agreements without much thought on compliance. In the past, breaching the obligations of the BA Agreement meant only a breach of contract. Noncompliance under the under the new requirements can jeopardize your business.

February Deadlines

The February deadlines are interim final regulations and something brokers need to know. The first deadline is February 17, 2010. That is the one-year anniversary of the Stimulus bill and the date the monetary penalties go into effect. The second date is February 23, 2010 and is the deadline for the new breach notifications requirements.

Don't Ignore Compliance

This is a very brief highlight of the impact of the HITECH Act. If you have been like many brokers who take a passing glance at your Business Associate responsibilities, read the fine print and take action. With the new legislation, there is a financial incentive for prosecuting HIPAA privacy and security violations. Don't think this applies only to the "other guy." That "other guy" might be you.

[Cathy Miller, Business Writer](#)/Consultant has over 30 years of professional writing with a specialty in health care, employee benefits and wellness. Cathy also has an active Life/Accident/Health insurance license. Visit Cathy at her business writing blog, [Simply stated business](#) to Keep it simple, clear & uniquely yours.

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