

KEEPING CURRENT . . . on COBRA & HIPAA[®]

The **AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009** was passed by Congress on Friday, February 13, 2009 and is expected to be signed by President Obama on Tuesday, February 17, 2009. This act, better known as the *Economic Stimulus Bill*, includes many changes to COBRA in Title III *Health Insurance Assistance for the Unemployed*, and changes to HIPAA Privacy and Security in Part III. The following articles contain a brief summary of those changes; updates will be forwarded as more details become available.

CHANGES TO COBRA

Title III: *Health Insurance Assistance for the Unemployed* (Sec. 3002) includes a subsidy of 65% of COBRA premiums for individuals that meet eligibility requirement and requires a new *Notice of Availability of Premium Reduction* be sent to Qualified Beneficiaries. The 65% premium reduction will be paid by the employer; the employer then receives a credit on his/her balance of the premium against payroll tax deposits. It directs the Secretary of the Treasury to reimburse the employer any amount that exceeds the payroll tax due. If a qualified beneficiary is no longer eligible for the premium subsidy, they are required to notify the employer or face penalties.

Title III also amends ERISA, the Internal Revenue Code, and the Public Health Service Act to allow COBRA coverage to continue past required termination dates for an employee who has attained age 55 or has completed 10 or more years of service.

CHANGES TO HIPAA

Part III, Subtitle D: Privacy - Part I: *Improved Privacy Provisions and Security Provisions* makes several changes to HIPAA:

- Applies regulations establishing safeguards for the protection of ePHI to business associates (BAs) and applies penalties for failure to comply. This section also requires the Secretary of HHS to issue guidance each year on the most effective and appropriate technical safeguards and security standards.

- Requires a covered entity and a BA that handle unsecured PHI to notify each individual of any security breach, and sets requirements for notifications, timeliness, method, and content. It includes a requirement for a notice to the Secretary of any breaches, including immediate notice of breaches involving 500 or more individuals.

- Treats BAs in the same manner as covered entities for purposes of PHI.

- Requires a covered entity to comply with an individual's request to restrict the disclosure of PHI.

- Sets requirements for notification of individuals and the FTC following the discovery of a breach of security and deems a violation of such requirements an unfair and deceptive act or practice in violation of the FTC Act.

- Requires organizations that provide data transmission of PHI, and that require routine access to such information, to enter into written contracts and to be treated as a BA. It applies this requirement to vendors that allow a covered entity to offer a personal health record to patients as part of its electronic health record.

- Amends title XI of the Social Security Act to consider a person to have obtained or disclosed individually identifiable health information in violation of HIPAA if the information is maintained by a covered entity and the individual obtained or disclosed such information without authorization.

- Requires the Secretary to: (1) impose a penalty for violations of HIPAA privacy provisions due to willful neglect; and (2) formally investigate any complaint of a violation if a preliminary investigation indicates a possible violation due to willful neglect. It directs the Comptroller General to submit to the Secretary a report including recommendations for a methodology under which an individual who is harmed by a HIPAA violation may receive a percentage of any civil monetary penalty or monetary settlement collected with respect to such offense. It sets financial penalties for HIPAA violations based on culpability and provides for enforcement of HIPAA provisions by state attorneys general through civil action. It also sets damages for civil suits.

- Requires the Secretary to provide for periodic audits to ensure that covered entities and business associates are complying with privacy requirements.

For more information on these topics, contact:

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