



EMPLOYEE BENEFITS CLIENT ALERT

March 29, 2010

NEW HITECH ACT REGULATIONS FORTHCOMING

The Department of Health and Human Service's Office for Civil Rights (the "OCR") recently announced its intent to issue additional regulations on the privacy and security provisions of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act").

The HITECH Act was adopted in 2009, as part of the larger American Recovery and Reinvestment Act. Among other things, the HITECH Act revised and expanded the reach of HIPAA—particularly HIPAA's national standards for the protection of individuals' health information

Under HITECH, the OCR is both empowered and required to promulgate certain regulations. In August 2009, OCR issued regulations requiring notification of privacy breaches. The entities covered by HIPAA and HITECH (health care providers, plans, and clearinghouses) and their service providers hoped that the remaining regulations would be published before the corresponding sections of the statute took effect on February 17, 2010. OCR informally suggested that it intended to publish regulations on that schedule, but the mid-February date passed without any additional guidance.

Earlier this month, OCR announced on its website that additional HITECH regulations are indeed forthcoming. The regulations will address:

- The liability of service providers (known as "Business Associates"), who are now directly subject to portions of HIPAA.
- Limiting the sale of individually identifiable health information and the use of such information for marketing and fundraising purposes.
- Strengthening individuals' right to access electronic medical records and their right to restrict the disclosure of individually identifiable health information.

We continue to monitor all available sources for developments in this area.

For more information on the material contained in this Client Alert, contact your regular Kutak Rock representative or any member of our Employee Benefits practice group listed below. For more information on our Employee Benefits practice and for recent news and alerts, please visit us at www.kutakrock.com.

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