

# LEGISLATIVE BRIEF

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## Final Rule Issued on HIPAA Privacy and Security Protections

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) is a broad federal law regarding health coverage. It contains provisions related to administrative simplification, including:

- Privacy and security of personally identifiable health information (Privacy and Security Rules);
- Enforcement of HIPAA requirements, including investigations, hearings and penalties for violations (Enforcement Rule); and
- Reporting requirements for breaches of unsecured protected health information (Breach Notification Rule).

HIPAA's administrative simplification rules generally apply to health care providers, health plans and health care clearinghouses (Covered Entities). In 2009, the Health Information Technology for Economic and Clinical Health Act (HITECH Act) was enacted as part of the American Recovery and Reinvestment Act of 2009. The HITECH Act strengthened the enforcement of HIPAA's administrative simplification provisions.

On Jan. 17, 2013, the U.S. Department of Health and Human Services (HHS) issued a [final rule](#) modifying the HIPAA Privacy, Security, Enforcement and Breach Notification Rules. The final rule is intended to enhance a patient's privacy protections, provide individuals new rights to their health information and strengthen the government's ability to enforce the law.

Covered entities and business associates must comply with the final rule by **Sept. 23, 2013**. However, the final rule includes up to a one-year extension for covered entities and business associates to revise their business associate agreements, if the agreements were entered into and compliant with HIPAA as of **Jan. 25, 2013**.

This Wine Sergi & Company LLC Legislative Brief provides a brief overview of the final rule.

### OVERVIEW OF THE FINAL RULE

The final rule implements a number of changes to the HIPAA Rules, and is comprised of the following four final rules:

- Final modifications to the HIPAA Privacy, Security and Enforcement Rules mandated by the Health Information Technology for Economic and Clinical Health (HITECH) Act, and certain other modifications to improve the Rules, which were issued as a proposed rule on July 14, 2010. These modifications:
  - Make business associates of covered entities directly liable for compliance with certain HIPAA Privacy and Security Rules requirements;
  - Strengthen the limitations on the use and disclosure of protected health information for marketing and fundraising purposes, and prohibit the sale of protected health information without individual authorization;
  - Expand individuals' rights to receive electronic copies of their health information and to restrict disclosures to a health plan concerning treatment for which the individual has paid out of pocket in full;



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- Require modifications to, and redistribution of, a covered entity's notice of privacy practices; Modify the individual authorization and other requirements to facilitate research and disclosure of child immunization proof to schools, and to enable access to decedent information by family members or others; and
- Adopt the additional HITECH Act enhancements to the Enforcement Rule not previously adopted in the Oct. 30, 2009, interim final rule (referenced immediately below), such as the provisions addressing enforcement of noncompliance with the HIPAA Rules due to willful neglect.
- Final rule adopting changes to the HIPAA Enforcement Rule to incorporate the increased and tiered civil money penalty structure provided by the HITECH Act, originally published as an interim final rule on Oct. 30, 2009.
- Final rule on Breach Notification for Unsecured Protected Health Information under the HITECH Act, which replaces the breach notification rule's "harm" threshold with a more objective standard and supplants an interim final rule published on Aug. 24, 2009.
- Final rule modifying the HIPAA Privacy Rule as required by the Genetic Information Nondiscrimination Act (GINA) to prohibit most health plans from using or disclosing genetic information for underwriting purposes, which was published as a proposed rule on Oct. 7, 2009.

*Source: U.S. Department of Health and Human Services*