

HITECH Act Privacy Provisions' Impact for Health Information Exchanges

Provisions	Effective Date	Comments
Breach Provisions	30 days after publication of interim final regulations	Interim final regulations must be promulgated by Aug. 16, 2009
Exceptions to "minimum necessary" standard (45 C.F.R. 164.502(b)(2)) applying to new limited disclosure requirement	Feb. 17, 2010	
Accounting for protected health information ("PHI") disclosures by covered entities using electronic health records ("EHR")	<ul style="list-style-type: none"> ▪ Covered entities using EHR as of Jan. 1, 2009: Jan. 1, 2014 ▪ Others: later of Jan. 1, 2011 or the date the covered entity acquires an EHR 	HHS may set a later date, but no later than 2016 for Covered entities that use an EHR as of Jan. 1, 2009 and 2013 for all others
Prohibition on sale of PHI	Six months after promulgation of final regulations implementing this prohibition	Final regulations must be promulgated no later than Aug. 17, 2010
New restrictions on using PHI to contact individuals to promote products or services	Applies to written communications occurring on or after Feb. 17, 2010	
Temporary breach notification requirements for vendors of personal health records (PHR) and other non-HIPAA covered entities	30 days after publication of interim final regulations	Interim final regulations must be promulgated by Aug. 16, 2009. Non- HIPAA covered entities are those entities with access to unsecured PHR, such as vendors of PHR, entities offering products or services through a PHR vendor's Web site, and third party service providers of such organizations
Provision requiring penalties for HIPAA violations resulting from willful neglect	Applies to penalties imposed on or after Feb. 17, 2011	Regulations must be promulgated by Feb. 17, 2012
Tiered increases in the amount of civil monetary penalties	Tiered increases in the amount of civil monetary penalties Feb. 17, 2009	
Enforcement through state attorneys general	Feb. 17, 2009	
All other provisions not specifically noted	Feb. 17, 2010	

Regulations	Effective Date	Comments
Interim final regulations to enforce breach-notice requirements	No later than Aug. 16, 2009	
Regulations re what information must be collected about each disclosure of electronic health information in an EHR covered entity that is disclosed for treatment, payment, or healthcare operations	No later than six months after HHS adopts standards on accounting for disclosures of PHI (should be no later than June 30, 2010)	Standards are to be recommended by the HIT Policy Committee and adopted by HHS through rulemaking no later than Dec. 31, 2009
Regulations to implement the prohibition on the sale of PHI	No later than Aug., 17, 2010	
FTC interim final regulations implementing breach notification requirements for vendors of personal health records and other non-HIPAA covered entities	Aug. 16, 2009; regulations become effective 30 days after promulgated	If Congress enacts new legislation establishing notice requirements for these entities, the FTC regulations will sunset on the effective date of regulations implementing such legislation
Regulations implementing new penalties for HIPAA violations resulting from willful neglect	Aug. 17, 2010	
Regulations implementing methodology for distributing to harmed individuals a percentage of civil money penalties/settlements resulting from HIPAA violations	No later than Feb. 17, 2012	

Guidance	Effective Date	Comments
Guidance specifying the technologies and methodologies that render PHI "unusable, unreadable or indecipherable to unauthorized individuals."	April 18, 2009, updated annually thereafter	If HHS does not issue guidance in the time period specified, American National Standards Institute (ANSI) standards must be used
Guidance regarding what constitutes "minimum necessary" for purposes of use or disclosure of individually identifiable health information	No later than Aug. 17, 2010	Prior to the issuance of such guidance, the standard is a "limited data set" or the "minimum necessary to accomplish the intended purpose of such use." This standard sunsets on effective date of guidance
Guidance regarding the most effective and appropriate technical safeguards for use in implementing security provisions of HIPAA	Feb. 17, 2010, updated annually thereafter	
Guidance on how best to implement the requirements for de-identification of PHI	Feb. 17, 2010	