



HIPAA Update

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Don't Delay! Business Associate Agreements Must be Implemented by September 23, 2013

As we have reminded clients in prior emails, covered entities must comply with the HITECH amendments to HIPAA by September 23, 2013. The HITECH revisions include a unique transition period pertaining to business associate agreements which are described in detail below. The general rule is that **any business associate agreement entered into after January 25, 2013 needs to be updated and revised by September 23, 2013**. We have updated our template business associate agreement and are making it available to clients for a fixed, flat fee.

Business Associate Agreement Transition Relief

Asking and answering the following questions will determine whether business associate contracts qualify for transition relief:

- *Was the business associate contract in place prior to January 25, 2013?*

The additional transition period is available only if the parties had a written business associate contract in place before January 25, 2013. In addition, the business associate contract must have complied with the privacy and security requirements that were in effect prior to January 25, 2013. **No transition period is available if a business associate contract was not in place before January 25, 2013. A compliant contract must be in place by the general compliance date of September 23, 2013.**

- *Must the business associate contract be renewed or modified between March 26, 2013 and September 23, 2013?*

The additional transition period is available only if the contract does not need to be renewed or modified in the six month period following March 26, 2013. Contracts that are not renewed or modified between March 26, 2013 and September 23, 2013 will be considered compliant for the transition period.

No transition period is available if the contract is modified or renewed between March 26, 2013 and September 23, 2013. Any contract modified between the aforementioned dates will need to be compliant by the general compliance date of September 23, 2013.

A business associate contract that qualifies for transition relief does not have to be amended or modified to comply with the 2013 final regulations until the earlier of (a) the date it is renewed or modified, or (b) September 22, 2014.

- *Is the business associate contract an “evergreen” contract?*

Many business associate contracts are “evergreen” contracts which renew automatically without any action by the parties involved. The preamble to the final regulations indicates that HHS intended that these contracts would be eligible for the additional transition period.

It is important to understand that the transition period applies to the contracts (documentation) only. All parties are required to comply with the HITECH final regulations by the compliance date of September 23, 2013.

If you have any questions about the HITECH amendments or need assistance updating business associate agreements, please contact Karen S. Rieger, Cori H. Loomis or any other member of Crowe & Dunlevy’s Healthcare practice group.

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