



## HIPAA Update Part I HIPAA MEGA RULE RELEASED

On January 17, 2013, the Department of Health & Human Services ("DHHS") released the largest set of modifications to the HIPAA privacy and security rules with the unveiling of the long awaited HIPAA Mega Rule.

The two most significant modifications included in the Mega Rule are:

1. **Stiffer Requirements for Business Associates.** Effective September 24, 2013 subcontractors of business associates who use and disclose PHI on behalf of business associates are now business associates by definition and will be subject to civil penalties and compliance requirements.

2. **Breach Notification Harm Threshold Lifted.** In DHHS' interim final rule on breach notification, covered entities and business associates were not required to notify patients of a breach if the covered entity or business associate determined a use or disclosure in question did not pose a significant risk of harm to the individual. The Mega Rule attempts to impose a more 'objective' standard and requires covered entities and business associates to assess the probability that PHI has been compromised instead of assessing the risk of harm to the individual.

The Mega Rule also expands individual rights by:

- Allowing patients to ask for a copy of their electronic medical record in an electronic form
- Giving individuals who pay by cash authority to instruct their provider not to share information about their treatment with their health plan
- Setting new limits on how information is used and disclosed for marketing and fundraising purposes
- Prohibiting the sale of an individuals' health information without their permission.

In addition to assimilating the modifications made by the Mega Rule, clients need to remember - the Annual OCR Breach Report is Due March 1, 2013.



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Covered entities must submit to the Office for Civil Rights (OCR) notice of breaches of unsecured protected health information (PHI) (45 C.F.R. 164.408). The number of individuals affected by the breach determines when the notification must be submitted to the Secretary. For breaches affecting fewer than 500 individuals, a covered entity must submit to OCR its annual notification of all breaches occurring in a calendar year within 60 days of the end of the calendar year in which the breaches occurred – or by March 1 of each year.

This notice must be submitted electronically by completing all information required on the breach notification form, located online at <http://ocrnotifications.hhs.gov/>. A separate form must be completed for each breach that has occurred during the calendar year.

Look for Part 2 of this update next week which will outline action items that clients need to be taking to comply with the Mega Rule requirements.

In the interim, if you have any questions about the Mega Rule or your reporting obligations contact either Karen S. Rieger at (405) 235-7788, [karen.rieger@crowedunlevy.com](mailto:karen.rieger@crowedunlevy.com) or Cori H. Loomis (405) 234-3238, [cori.loomis@crowedunlevy.com](mailto:cori.loomis@crowedunlevy.com).

## About Crowe & Dunlevy

Crowe & Dunlevy, which has been providing effective legal counsel for over 110 years, is one of the most prominent law firms in Oklahoma, with offices in Oklahoma City and Tulsa. The firm and its attorneys are annually ranked among the top professionals in the nation by recognized peer-review organizations.

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