

Memorandum to Municipal Clients

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municipality. Accordingly, Business Associates, like Covered Entities, are required to implement policies and procedures to comply with HIPAA's Privacy and Security Rules.

- Enhanced Patient Rights and Breach Notification Requirements - The amendments provide patients with enhanced rights to access their PHI and include specific notification requirements when a Covered Entity or Business Associate suffers a data breach.
- Expanded Enforcement and Fine Provisions - HIPAA's enforcement and fine provisions applicable to Covered Entities and Business Associates for violation of HIPAA's security or privacy mandates have increased. Depending on the nature of the violation, fines ranging from \$25,000 to \$1.5 million may now be imposed. The recent amendments also provide the state Attorney General with explicit authority to enforce HIPAA and allow criminal cases to proceed against employees for HIPAA security breaches.

Compliance with ARRA

Municipalities in which HIPAA is applicable may take the following steps to further ensure compliance with the new amendments:

- Review Business Associate Agreements – Review and, as necessary, revise current Agreements to ensure compliance with ARRA's new requirements. Agreements must acknowledge the Business Associate's independent responsibility under HIPAA to maintain the confidentiality and security of all electronically transmitted PHI used or disclosed in assisting a Covered Entity. Agreements must also recognize the Business Associate's responsibility to implement policies and procedures to comply with HIPAA's Privacy and Security Rules, including breach notification procedures.
- Examine Training Policies and Materials - Evaluate current training protocols concerning HIPAA's Privacy and Security Rules, and consider additional training on ARRA's heightened requirements and enforcement provisions.
- Ensure Employee/Workforce Compliance with HIPAA - Assess employee/workforce compliance with HIPAA's requirements, as amended, and with any locally adopted privacy and security policies.
- Evaluate Electronic Security and Procedures - Review current computer security procedures and protocols concerning internal and external electronic transmission of PHI. Be aware that the use of appropriate encryption technology minimizes a provider's potential liability under HIPAA in the event of a security breach.

Additional information concerning HIPAA and its amendments is available online at: www.hhs.gov/ocr/privacy.