

Legislative Brief

HITECH Act: Changes to HIPAA Privacy Notice



The HITECH Act

The HITECH Act is the Health Information Technology for Economic and Clinical Health Act. It was enacted on February 17, 2009, as part of the American Recovery and Reinvestment Act of 2009 (ARRA). The HITECH Act makes some significant changes to the privacy and security requirements of the Health Insurance Portability and Accountability Act of 1996 (the HIPAA Privacy and Security Rules), which are applicable to group health plans.

For example, group health plans (also known as Covered Entities under HIPAA) must now notify individuals of a breach of unsecured protected health information (PHI). Covered Entities may also have to comply with new rules regarding giving individuals access to their own PHI.

Content of the Privacy Notice

Covered Entities are required to provide a notice of privacy practices to each individual who is the subject of PHI. The HITECH Act changes will affect a Covered Entity's privacy practices and therefore the content of its privacy notice. If your health plan's privacy practices are changing as a result of the HITECH Act, your notice should be revised as well.

You can contact your FAS-EBA, Inc. representative for more information on the HITECH Act, or for a sample privacy notice that incorporates the changes.

Deadline for Distributing the Privacy Notice

Under the HIPAA Privacy Rule, a revised privacy notice must be provided to all enrollees at the time of enrollment and also **within 60 days of a material revision** to the notice. Note that, while the Privacy Rule requires that the notices be provided to all "enrollees," the preamble to the Rule explains that providing the notice to the "named insured" or "employee" is acceptable.

After the privacy notice is first sent, Covered Entities must provide notice **every three years** that a privacy notice is available and how enrollees may obtain a copy. Sending a revised privacy notice will reset the three-year notice requirement. For example, if Covered Entity changed its privacy practices and revised its privacy notice effective February 17, 2010, the revised notice should be distributed by April 18, 2010.

Please contact your FAS-EBA, Inc. representative with any questions on distributing the privacy notice.

ES 3/10

This FAS-EBA, Inc. Legislative Brief is not intended to be exhaustive nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel for legal advice.

Content © 2010 Zywave, Inc. Images © 2000 Getty Images, Inc. All rights reserved.