THOMPSON COBURN LLP

Reminder: PHI Breaches Must Be Reported to HHS
3/4/2010

As you will recall from our prior alerts, the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") requires that healthcare providers and other covered entities subject to compliance with HIPAA provide the U.S. Department of Health and Human Services ("HHS") with notice of any breach of unsecured protected health information ("PHI") that occurs after September 23, 2009. Under the HITECH Act breach notification requirements, HHS must be notified within 60 days of discovery of a breach of unsecured PHI if the incident involved 500 or more individuals. HHS recently posted a list of the reported breaches on the website for the Office of Civil Rights, the agency which enforces compliance with HIPAA privacy and security rules, which you can view at their website. The list includes forty-one breach incidents from a variety of causes including theft, loss, unauthorized access, incorrect or misdirected mailings and emails, hacking and phishing scams across an array of organizations including insurers, hospitals, physician practices and even a state agency.

We would also like to remind you that while breaches of unsecured PHI affecting less than 500 individuals do not need to be reported to HHS immediately, information regarding the breaches needs to be provided to HHS annually. All notifications to HHS must be submitted electronically on a web-based online form. To be in a position to make these required reports to HHS, it is necessary for providers to maintain a log detailing any breaches of unsecured PHI and submit a report of the breaches to HHS no later than 60 days after the end of the calendar year during which the breaches occurred. Organizations failing to make such reports are subject to sanctions by HHS, which range from $100 to $50,000 per violation. The first annual breach reports were due on March 1, 2010. Providers who do not have any breaches of unsecured PHI are not required to file a report with HHS.

[1] For more information on the breach notice requirements, please see our September 10, 2009 alert.

Please contact one of the attorneys in our Health Care Practice Group if you have any questions about the HHS notification requirements or would like assistance with developing a breach notification policy or a PHI breach log form.

Health Care Practice Attorneys

Allen D. Allred	View Resume	aallred@thompsoncoburn.com
James L. Fogle	View Resume	jfogle@thompsoncoburn.com
Evan Raskas Goldfarb	View Resume	egoldfarb@thompsoncoburn.com
Milada R. Goturi	View Resume	mgoturi@thompsoncoburn.com

James F. Gunn	View Resume	jgunn@thompsoncoburn.com
Joyce Harris Hennessy	View Resume	jhennessy@thompsoncoburn.com
Claire M. Schenk	View Resume	cschenk@thompsoncoburn.com
Jan Paul Miller	View Resume	jmiller@thompsoncoburn.com
Meaghan Moriarty	View Resume	mmoriarty@thompsoncoburn.com
Tonya Oliver	View Resume	toliver@thompsoncoburn.com

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