



September 22, 2009 - Topic: Privacy and Security

Health Data Breach Notification Rules To Take Effect This Week

Health IT industry leaders and privacy advocates are watching carefully to see how the federal government will enforce expanded health data breach notification rules set to take effect this week, *Federal Computer Week* reports.

HHS' breach-notification rule, which applies to HIPAA-covered entities and business associates, is scheduled to take effect tomorrow.

The Federal Trade Commission's **companion rule**, which applies to personal health record vendors and other non-HIPAA-covered entities, is scheduled to take effect Thursday.

The federal economic stimulus package mandated the creation of both rules.

HHS Rule Details

The HHS breach-notification rule requires health care providers to alert patients of health data security breaches. The rule also imposes civil and criminal penalties for such breaches.

However, if the breaches involve encrypted data, health care providers would not need to notify consumers.

Observers say the HHS rule has a broader scope than previous data-breach regulations because it applies to the "business associates" of HIPAA-covered entities.

Harm Threshold

The HHS rule also includes a provision stating that covered entities can determine whether to classify disclosed data as a breach based on whether the disclosure poses a risk of financial or other harm to the patient.

Advocacy groups such as the Center for Democracy and Technology have expressed concern that this harm threshold could weaken patient privacy protections (Lipowicz, *Federal Computer Week*, 9/21).

Gerry Hinkley, partner and chair of the health IT practice group for the law firm Davis Wright Tremaine, called the harm threshold a "huge weakness" because it allows the covered entities to decide whether a security lapse could cause harm.

Hinkley spoke during last week's HIPAA Summit in Washington, D.C. (Nicastro, *HealthLeaders Media*, 9/21).

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