

ALERT

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U.S. Department of Health and Human Services and FTC Issue New Regulations Regarding Information Breach Notifications

The U.S. Department of Health and Human Services (HHS) has issued a new rule requiring health care providers, health plans and other entities covered by the Health Insurance Portability and Accountability Act (HIPAA) to notify individuals when their health information is breached. These breach notification regulations implement provisions of the Health Information Technology for Economic and Clinical Health (HITECH) Act, passed as part of the American Recovery and Reinvestment Act of 2009 (ARRA).

Terms of the new HHS regulation include:

- Health care providers and other HIPAA-covered entities must promptly notify affected individuals of a breach.
- In breaches that affect more than 500 individuals, health care providers and other HIPAA-covered entities must also notify the HHS Secretary and the media.
- Breaches affecting fewer than 500 individuals will be reported to the HHS Secretary on an annual basis.
- Business associates of covered entities must notify the covered entity of breaches at or by the business associate.

The Federal Trade Commission (FTC) has issued similar breach notification regulations that apply to vendors of personal health records and certain others not covered by HIPAA.

Organizations meeting these requirements to secure information as specified by the guidance through encryption or destruction will not be required to notify individuals in the event of an information breach. HHS will issue an updated guidance document, and it will be updated annually.

The notification requirement regulations are enacted under the American Recovery and Reinvestment Act of 2009.

For more information on the HHS interim final rule, visit http://federalregister.gov/OFRUpload/OFRData/2009-20169_PI.pdf.

For the FTC rule, visit <http://www.ftc.gov/opa/2009/08/hbn.shtm>.

For more information on the HIPAA Privacy Rule, visit <http://www.hhs.gov/ocr/privacy/>

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