



Client Alert

Contact Attorneys Regarding
This Matter:

Tracy M. Field
404.873.8648 - direct
404.873.8649 - fax
tracy.field@agg.com

Jessica Tobin Grozine
404.873.8526 - direct
404.873.8527 - fax
jessica.grozine@agg.com

Arnall Golden Gregory LLP
Attorneys at Law
171 17th Street NW
Suite 2100
Atlanta, GA 30363-1031
404.873.8500
www.agg.com

CVS Pays \$2.25 Million in HIPAA Settlement – A “New” Era of HIPAA Enforcement Begins

On February 18, 2009, the U.S. Department of Health and Human Services (“HHS”) Office of Civil Rights (“OCR”) and the Federal Trade Commission (“FTC”) jointly announced that CVS Caremark Corp. (“CVS”) will pay the U.S. government \$2.25 million to settle charges that it violated the privacy regulations under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other federal laws. This settlement came at the conclusion of an extensive joint investigation by OCR and the FTC which found that CVS employees improperly disposed of items that contained protected health information (“PHI”).

In addition to the \$2.25 million settlement, CVS submitted a Corrective Action Plan which applies for three years and requires CVS to develop privacy policies and procedures, implement a training program that instructs employees on the disposal of PHI, develop plans to monitor compliance and to report noncompliance, and engage a third party to conduct a compliance assessment.

The CVS settlement is one of several recent developments that signal increased HIPAA enforcement efforts. Last July HHS announced its first penalty for violations of HIPAA Privacy and Security rules against Providence Health System relating to Providence’s loss of electronic backup media and laptop computers containing health information. Providence and HHS entered into a Resolution Agreement where Providence agreed to pay \$100,000 to HHS and implement an extensive Corrective Action Plan.

Subsequently, in November 2008, HHS Office of Inspector General published a report criticizing the Centers for Medicare & Medicaid Services (“CMS”) for not providing effective oversight and enforcement of HIPAA. The publication encourages CMS to be proactive and conduct more frequent compliance reviews of HIPAA covered entities.

Most recently, on February 17, 2009, President Obama signed the American Recovery and Reinvestment Act of 2009 (“ARRA”), which included new rules expanding HIPAA. Among other things, ARRA requires HIPAA covered entities to notify affected individuals, HHS, and the media of security breaches. ARRA also provides for steeper fines for HIPAA violations and enables Attorneys General to bring enforcement actions. Civil penalties will be mandatory for HIPAA violations arising from willful neglect.

Given these developments, covered entities and business associates should review policies and practices previously adopted under HIPAA to ensure that they are complete. In addition, affected entities should begin revising policies and procedures to address new requirements under ARRA.

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