

July 23, 2010

If you have questions regarding the information in this alert or would like to receive further information regarding our Health Care Department, please contact:

**Jennifer L. Benedict**  
313.465.7326  
jbenedict@honigman.com

**Ann T. Hollenbeck**  
313.465.7680  
ahollenbeck@honigman.com

**Matthew R. Keuten**  
313.465.7510  
mkeuten@honigman.com

**Stuart M. Lockman**  
313.465.7500  
slockman@honigman.com

**Kenneth R. Marcus**  
313.465.7470  
kmarcus@honigman.com

**Erica D. Partee**  
313.465.7528  
epartee@honigman.com

**Linda S. Ross**  
313.465.7526  
lross@honigman.com

**Angela Epolito Sprecher**  
313.465.7540  
asprecher@honigman.com

## HHS Releases Proposed Rules to Strengthen the HIPAA Privacy, Security and Enforcement Regulations

On July 8, the Department of Health and Human Services (HHS) issued a notice of proposed rulemaking to implement changes to strengthen the Health Insurance Portability and Accountability Act's (HIPAA) privacy and security protections for health information. The proposed rule implements changes required by the Health Information Technology for Economic and Clinical Health (HITECH) Act. The HITECH Act seeks to promote the widespread adoption and standardization of health information technology and requires HHS to modify the privacy, security and enforcement regulations to improve HIPAA's effectiveness. The proposed rule imposes significantly more burdensome obligations on business associates and subcontractors and makes other changes to the HIPAA regulations, including those governing marketing, fundraising and individual access to information.

**Business Associates** - The proposed rule expressly extends HIPAA's privacy and security requirements for protecting patients' health information to business associates of covered entities and provides a more detailed, expanded definition of business associate. For example, the proposed rule makes clear that HIPAA's security provisions also apply to business associates. The proposed rule also expressly expands the classification of business associates to include entities that provide data transmission and patient safety activities to covered entities. Notably, under the proposed rule, business associates are subject to the same enforcement actions as covered entities.

**Subcontractors** - The proposed rule designates subcontractors as business associates. Entities that act on behalf of, or provide services to, business associates will be required to comply with the HIPAA privacy and security requirements, including the administrative, technical and physical safeguards required by the security rule. Business associates that engage subcontractors will remain responsible for obtaining satisfactory assurances that the subcontractor will appropriately safeguard protected information.

*This Alert provides general information only and does not constitute legal advice for any particular situation.  
© Honigman Miller Schwartz and Cohn LLP 2010. All rights reserved.*

**Marketing and Fundraising** - The proposed rule places new, additional limits on the use and disclosure of protected health information (PHI) for marketing and fundraising purposes. Covered entities are required to obtain patient authorization for any disclosure of protected health information that results in direct or indirect remuneration for the covered entity.

**Access** - The proposed rule also strengthens a patient's right to access his or her own health information. For electronically maintained protected health information, a covered entity must provide access to an individual requesting his or her information in electronic form and the format requested by the individual.

HHS will accept comments on the proposed rule until September 13, 2010. HHS plans to give covered entities and business associates 180 days after the final rule is published to comply with the new requirements. Organizations and businesses considered covered entities, business associates or subcontractors under HIPAA should become familiar with the proposed rule to begin planning to ensure compliance with the more stringent privacy and security requirements to which they will be subject. For more information on the specific provisions in the proposed rule and what should be done to ensure compliance, please contact any member of the Honigman Health Care Department.

*This Alert provides general information only and does not constitute legal advice for any particular situation.*

*© Honigman Miller Schwartz and Cohn LLP 2010. All rights reserved.*