



TRICARE
MANAGEMENT
ACTIVITY

OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE
HEALTH AFFAIRS
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APP 13

MEMORANDUM FOR TRICARE MANAGEMENT ACTIVITY CHIEF
FUNCTIONAL OFFICERS
DIRECTORS, TRICARE REGIONAL OFFICES
DIRECTORS, TRICARE AREA OFFICES

SUBJECT: Reporting a Breach as Defined by the Health Information Technology for Economic and Clinical Health Act Provisions of the American Recovery and Reinvestment Act of 2009

The Military Health System (MHS) is entrusted with securing and safeguarding the Personally Identifiable Information and Protected Health Information (PHI) of our beneficiaries. In addition to the requirements outlined in Department of Defense (DoD) 5400.11-R, "Department of Defense Privacy Program," responsibility for breach notification and reporting has been expanded with the recent passage of the Health Information Technology for Economic and Clinical Health (HITECH) Act.

The HITECH Act requires that amendments be made to Health Insurance Portability Accountability Act (HIPAA) Privacy and Security rules and establishes new individual notification and government reporting requirements when a "breach" of "unsecured Protected Health Information (PHI)" occurs. A "breach," as defined by the Department of Health and Human Services (HHS), differs from the broader definition established by DoD policy. HHS issued guidance in August 2009 for these new requirements in an Interim Final Rule on Breach Notification for Unsecured Protected Health Information ("HHS Breach Rule"). This new interim rule includes requirements to provide notification to individuals affected by breaches and to report breaches of unsecured PHI to HHS. It should be noted that amendments to various requirements may be implemented when the final rule is published.

These new provisions apply equally to MHS Components, including Managed Care Support Contractors and other business associates of MHS-covered entities. Business associates shall continue to follow existing contract requirements by reporting to the TRICARE Management Activity (TMA) Privacy Office, which will determine if the incident qualifies as a breach under the provisions of the HHS Breach Rule and will subsequently report the incident directly to the Secretary, HHS, as appropriate. In such instances where reporting to HHS is required, the TMA Privacy Office will provide courtesy notification to the contractor.

More information on breach reporting requirements can be found on the TMA Privacy Web site (www.tricare.mil/tmaprivacy/breach.cfm) and HHS Web site (www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/index.html). Associated questions regarding the breach notification and response requirements set forth by the HHS Breach Rule should be sent to the TMA Privacy Office via e-mail at: PrivacyOfficerMail@tma.osd.mil. Please ensure this memorandum is disseminated to all TMA contractors and sub-contractors.

[Signed]

C. S. Hunter
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Deputy Director