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**Health Law Alert
Guidance for Securing PHI Issued by HHS**

The Department of Health and Human Services has just issued guidance on the technologies and methodologies for keeping protected health information (PHI) secure for purposes of health breach notifications. The guidance identifies technologies and methodologies for ensuring PHI is unusable, unreadable or indecipherable to unauthorized individuals.

The two accepted methods for securing electronic PHI from unauthorized access and use are encryption and destruction. The successful use of encryption depends upon two key features: (1) the strength of the encryption algorithm and (2) the security of the decryption key or process. In order for destruction to be acceptable it must occur in one of two ways: (1) paper, film or other hard copy media have been shredded or destroyed such that the PHI cannot be read or otherwise reconstructed or (2) electronic media have been cleared, purged or destroyed consistent with NIST Special Publication 800-88, *Guidelines of Media Sanitation*, so that the PHI cannot be retrieved.

The HHS guidance marks the first of several HHS guidance and regulations relating to the HIPAA security and privacy changes that were required under ARRA (American Recovery and Reinvestment Act of 2009). Covered entities and their business associates should be prepared to be in compliance with the specified encryption and destruction standards to ensure that PHI is appropriately secured for purposes of the breach notification requirements. Although the HHS guidance is voluntary, compliance with the standards permits covered entities and business associates to disregard the burdensome notification requirements that will be set forth under the interim final regulations.

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