

Advocacy Suggests that the United States Department of Health and Human Services Take Small Businesses That Are Defined as “Business Associates” Into Consideration as it Finalizes the HIPAA Modification Rule

On September 9, 2010, the Office of Advocacy (Advocacy) filed comments with the United States Department of Health and Human Services (HHS) providing the agency with its Regulatory Flexibility Act suggestions and industry concerns about the potential economic impacts associated with finalizing the Modifications to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) rule. A copy of Advocacy’s letter may be accessed at <http://www.sba.gov/advo/laws/comments>.

On July 14, 2010, HHS published the Modifications to the HIPAA Privacy, Security, and Enforcement Rules Under the Health Information Technology for Economic and Clinical Health Act (75 FR 40868) in the *Federal Register*. This rule modified the requirements of the rules previously finalized under HIPAA designed to prevent inappropriate use and disclosure of individuals' health information and to require organizations which use health information to protect that information and the systems which store, transmit, and process it. The rule extended the security and enforcement provisions required under HIPAA not only to “covered entities” (health care providers who conducted covered health care transactions electronically, health plans and health care clearinghouses), but to “business associates” (third party administrators or pharmacy benefit managers for health plans, claims processing or billing companies, transcription companies, and persons who perform legal, actuarial, accounting, management, or administrative services for covered entities and who require access to protected health information).

- Small medical record storage companies that are defined as “business associates” approached Advocacy with their concerns with the rule, including possibly being forced to indemnify “covered entities” in any business associate agreement, and that they are not treated the same as some large courier companies that are exempted from the rule.

- Advocacy’s provided the small record storage industry’s concerns to HHS and also raised additional Regulatory Flexibility Act analysis issues with HHS. Advocacy asked that HHS to take Advocacy’s and the affected entities’ concerns into consideration as it continued to clarify, develop and finalize the rule.

For more information, visit Advocacy’s web page at www.sba.gov/advo or contact Linwood Rayford at (202) 205-6533.