

## HIPAA HITECH Amendments

### Overview of requirements for covered entities and business associates

#### About Nuesoft Technologies

Nuesoft is an application service provider (ASP) of practice management software for physicians' offices, university health centers and billing centers. Unlike competitors' systems that are delivered through a Web browser, Nuesoft delivers its software products via a direct connection from a user's workstation to a highly protected environment using the Internet as a conduit.

A privately owned company, Nuesoft was founded in 1993 through an incubator program at the Georgia Institute of Technology's Advanced Technology Development Center (ATDC), and offered the first platform-independent software to the medical community. Nuesoft has an established U.S. customer base of more than 15,000 users in 49 states – including 7,000 medical providers from nearly 100 specialties. Nuesoft also serves as an independent clearinghouse, and processes more than 3.5 million electronic data transactions per year.

The Health Information Technology for Economic and Clinical Health (HITECH) Act of 2009 includes several amendments to the Health Information Privacy and Accountability Act of 1996 (HIPAA). HIPAA is a complex law made up of five titles that, among other things, regulates the use and disclosure of individually identifiable health information, or “protected health information (PHI).”

Previously, HIPAA applied only to “covered entities;” or health care providers, health plans, and clearinghouses that submit health information electronically. Under ARRA, “business associates,” or vendors – like Nuesoft – that provide administrative services to covered entities, will now be required to directly comply with HIPAA's privacy and security requirements.

Most of the new HIPAA provisions will be effective Feb. 17, 2010, and will be enforced through heightened penalties and mandatory audits by the U.S. Department of Health and Human Services. Nuesoft is taking the HIPAA changes very seriously. We have reviewed our safeguards, procedures and audit controls to ensure that we meet or exceed the new requirements for business associates.

#### What do health care practices and other covered entities need to do to ensure compliance?

1. Follow new public reporting requirements for informing individuals of any unauthorized disclosure of their unsecured PHI. Unsecured PHI refers to information not secured by a technology specified by HHS in its April 2009 guidance.\* If more than 500 individuals are affected, the covered entity must also notify local media outlets and Health and Human Services (HHS) of the security breach.
2. Use new “minimum necessary” requirements (i.e. – limited data sets) when disclosing PHI for business purposes. A limited data set excludes basic identifying information such as the individual's name, social security number, mailing addresses, e-mail addresses, telephone numbers, and similar identifiers.
3. Honor individuals' requests to restrict disclosure of PHI. For example, with the new law, covered entities are restricted from receiving any money in exchange for PHI, unless the individual(s) whose PHI is involved gives written authorization (with exceptions specified by HHS for public health, research, etc.)
4. Comply with new accounting/access laws related to electronic health records (EHRs).
5. Comply with updated marketing and fundraising restrictions.
6. Amend business associate agreements to encompass new requirements.

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### What is Nuesoft's responsibility under HIPAA?

As a business associate, Nuesoft is now subject under the HITECH Act to the provisions of HIPAA that govern covered entities, including:

1. The administrative, physical and technical safeguards and the policy, procedure and documentation requirements of HIPAA's Security rule.
2. Provisions of the Privacy Rule relating to contractual terms for using and disclosing PHI. A breach of the privacy requirements contained in a business associate agreement will now be punishable under HIPAA.
3. Expanded breach notification rules under the jurisdiction of HHS and the Federal Trade Commission (FTC).

### When do the new HIPAA rules take effect?

The breach notification requirements were effective in Sept. 2009, but the vast majority of the changes to HIPAA's security and privacy rules under HITECH will take effect on Feb. 17, 2010.

### What are the new enforcement policies?

Civil money penalties for violations of HIPAA have been significantly increased and now apply to both covered entities and their business associates. Penalties now range from \$100 to \$50,000 per violation, with a maximum in any one year ranging from \$25,000 to \$1.5 million. In addition, state attorneys general can bring civil HIPAA enforcement actions directly against covered entities and business associates. The new law requires HHS to investigate complaints, impose penalties for willful neglect and conduct periodic audits of both covered entities and business associates to ensure they are in compliance with the rules.

\* HHS to issue guidance on minimum necessary in 2010. Pending that guidance, covered entity must limit use and disclosure of PHI, to the extent practicable, to information under limited data set rules.

\*\* According to the guidance, PHI is rendered unusable, unreadable, or indecipherable to unauthorized individuals only if it is (1) encrypted by "the use of an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key"; or (2) the media on which the PHI is stored or recorded has been destroyed.

### HIPAA Resources

Federal Register citations: 45 CFR §164.308; 45 CFR §164.310; 45 CFR §164.312; 45 CFR §164.316; 45 CFR §164.504(e); 45 C.F.R. § 164.512; 45 C.F.R. § 164.522(a)(1)(i)(A); 45 C.F.R. § 164.524, 42 U.S.C. 1320d-6(a); and Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

American Medical Association

Medical Group Management Association

[www.hipaa.org](http://www.hipaa.org)

[www.hipaablog.blogspot.com](http://www.hipaablog.blogspot.com)

### For more information

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