

Protected Health Information Qualifies as 'Safe Harbor' From Breach Notification Requirement

The American Recovery and Reinvestment Act (ARRA) directed the U.S. Department of Health and Human Services (HHS) to issue guidance on the approved methods of rendering Protected Health Information (PHI) unusable, unreadable or indecipherable to unauthorized individuals.

The PHI must be either encrypted or destroyed to remove it from the definition of "unsecured" PHI. This is subject to HIPAA's recently enacted requirement to notify individuals of privacy or security breaches, according to guidance from the HHS.

Examples of Proper Disposal

HHS Office for Civil Rights (OCR) cited the following as examples of proper disposal methods:

- Shredding, burning, pulping or pulverizing paper records so PHI is rendered essentially unreadable and indecipherable, and cannot be reconstructed otherwise.
- Maintaining labeled prescription bottles and other PHI in opaque bags in a secure area and using a disposal vendor as a business associate to pick up and shred or otherwise destroy the PHI.
- Clearing, magnetically purging or physically destroying electronic media. Clearing involves using software or hardware products to overwrite media with non-sensitive data. Purging entails "degaussing" or exposing the media to a strong magnetic field in order to

disrupt the recorded magnetic domains. If circumstances warrant the destruction of the electronic media before disposal, destruction methods may include disintegrating, pulverizing, melting, incinerating or shredding the media.

Encrypting or destroying PHI in this manner will result in what HHS calls "the functional equivalent of a safe harbor". In this case the covered entity or business associate would not have to provide the notification otherwise required by Section 13402 of ARRA's Health Information Technology for Economic and Clinical Health (HITECH) Act.

If paper or electronic PHI is destroyed prior to its disposal in accordance with this guidance, no breach notification is required following access to the disposed hard copy or electronic media by unauthorized persons.

What This Means For Counties

What matters is that counties take reasonable steps to secure PHI and e-PHI. The specified methods, if used, can give counties "the functional equivalent of a safe harbor" from providing the notification otherwise required by Section 13402 of ARRA's HITECH Act.

For more information, contact CTSI at 303-861-0507.