

CLIENT ALERT: MAY 11, 2010

**SCOPE OF HIPAA DISCLOSURE LOGS SOON TO BE EXPANDED;
COMMENTS DUE MAY 18, 2010**

The Office of Civil Rights, Department of Health and Human Services (“OCR”) recently published a [Request for Information](#) (“RFI”) concerning a new proposed requirement set forth in the Health Information Technology for Economic and Clinical Health Act of 2009 (“HITECH”). Currently, [HIPAA regulations](#) require covered entities to create and maintain an accounting of disclosures of protected health information (“PHI”). All disclosures of PHI must be logged on the accounting except for disclosures for purposes of treatment, payment, or health care operations (“TPO”). Going forward, however, [HITECH](#) section 13405(c) will remove that exception for electronic TPO disclosures. The deadline for compliance with the expanded accounting of disclosures depends on the date on which a provider adopts an electronic health records (“EHR”) system. For entities that adopted EHRs after January 1, 2009, compliance will be required by **January 1, 2011**, or any time thereafter on the date the entity acquires EHRs. In other words, as HITECH currently stands, providers will need to log all electronic PHI disclosures, even if the disclosure is for TPO purposes. The contents of each log entry may vary depending on the frequency of the disclosure.

Through the RFI, OCR seeks comments on implementing this proposed new requirement. Comments, which providers may submit electronically or in hard copy, are due on Tuesday, May 18, 2010.

Please contact a member of our health care team with any questions or for assistance in preparing your comments.