The American Recovery and Reinvestment Act, intended to help spur economic recovery, also builds on existing HIPAA regulations. Title XIII of the Act, the Health Information Technology for Economic and Clinical Health (HITECH) Act includes several new requirements such as media notification in some cases and increased penalties of which you need to be aware.

**Breach Notification** -

In the event of breach of PHI the following must be notified:

- Individuals involved in the breach
- The Department of Health and Human Services
- "Prominent Media Outlets" in the areas involved (in cases involving more than 500 individuals, or when 10 or more individuals can not be contacted)

In addition to notifying the individuals involved, the Act now requires covered entities to notify Health and Human Services (HHS) of every case where protected health information has been improperly disclosed. In some cases the Act requires that the media be notified, as well.

If a breach involves more than 500 individuals the covered entity must notify "prominent media outlets." Information about these breaches are also posted on the HHS public website. Even breaches involving fewer than 500 individuals might require notifying the media. If there are "10 or more individuals for which there is insufficient or out-of-date contact information" a "conspicuous posting" on the home page of the covered entity's website or a notification to a "major print or broadcast media" outlet is required.

**Increased Penalty Provisions** -

The Act increased the penalties associated with HIPAA violations, ranging from $100 to $50,000 per violation. There are annual caps on violation penalties ranging from $25,000 to $1.5 million, but those caps only apply to the violation of a single HIPAA requirement or prohibition. Violation of multiple HIPAA requirements could mean more penalties. These increased penalties have already gone into effect.

**The Act also makes it clear that individuals, including employees of covered entities, can be convicted of criminal violations of HIPAA.**

Some of the regulations and how they will be implemented are still being finalized by HHS. We will provide further updates as more information is made available.

For more information see:

- [Health Information Technology for Economic and Clinical Health (HITECH) Act](http://thomas.loc.gov) (Specifically *Subtitle D--Privacy*)
- [Economic Stimulus Package Ratchets up Privacy and Security for Health Information](http://dwt.com) at dwt.com, Davis Wright Tremaine, LLP