

# CLIENT ALERT

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**Perhaps the most important discussion you should be having with your broker is not about your rates, but what happens to all the employee information you provide them.....**

**If you do not know what how the census data, enrollment forms and claim problems you email your broker are stored by your broker, you need to ask.**

Data breaches continue to occur at every level, from the mega store to the small privately owned pharmacy. One of your obligations as employer when acting as the Health Plan is to ensure that your employee's data is treated according to HIPAA Standards.

HIPAA legislation requires both Group Health Plans and their Business Associates (your broker) to be fully HIPAA compliant with respect to electronic Protected Health Information (ePHI). This means that ePHI must be *stored and sent using, at a minimum 256 bit encryption* and you must have the proper Business Associate Agreements in place. You may be fined if your broker is not adequately safeguarding your data and you have no Business Associates Agreement.

At CHB Group we take your employee's personal information seriously and ensure that it is secure and encrypted. This means that any information which contains ePHI is both housed on a secure, encrypted drive and e-mails that are sent with census data, enrollment forms and claim service issues are sent via secure, encrypted email. Additionally, we provide our clients with an executed Business Associate Agreement.

**Now is the time to ask your broker how your information is handled, before it's too late.**

**CASE EXAMPLE - <http://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/agreements/raleigh-orthopaedic-clinic/index.html>**

**\$750,000 settlement highlights the need for HIPAA business associate agreements**

Raleigh Orthopaedic Clinic, P.A. of North Carolina (Raleigh Orthopaedic) has agreed to settle charges that it potentially violated the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules by failing to execute a business associate agreement prior to turning over PHI of 17,300 to a potential business partner. Raleigh Orthopaedic is a provider group practice that operates clinics and orthopaedic surgery center in the Raleigh, North Carolina area. The settlement includes a monetary payment of \$750,000 and a robust corrective action plan.

**PENALTY LEVELS FOR DATA BREACH:**

Violation Category – From Section 1176(a)(1) of the Social Security Act	Each violation	All such violations of an identical provision in a calendar year
(A) The person did not know (and by exercising reasonable diligence would not have known) that they committed a HIPAA violation	\$100 - \$50,000	\$1,500,000
<b>(B) The violation was due to reasonable cause, but not willful neglect</b>	\$1,000 - \$50,000	\$1,500,000
<b>(C)(i) The violation was due to willful neglect and steps were taken to correct the situation</b>	\$10,000 - \$50,000	\$1,500,000
<b>(C)(ii) The violation was due to willful neglect and <u>no</u> steps were taken to correct the situation</b>	\$50,000	\$1,500,000

CHB Group has covered HIPAA extensively in Client Alerts over the years. Additional information can be found at [www.chb-group.com](http://www.chb-group.com), click on Client Alerts. Also visit: <http://www.hhs.gov/ocr/privacy/hipaa/understanding/index.html>

**DISCLAIMER - This is a very high level summary and is not meant to advise you of all your obligations under HIPAA, HITECT or the Omnibus Rule. This Client Alert is informational only and should not be construed as insurance, legal or tax advice. If you would like more information, please do not hesitate to contact our office, your legal counsel or accountant.**