

# LEGAL ALERT

April 26, 2017

## Covered Entity Penalized for Lack of Business Associate Agreement

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The U.S. Department of Health & Human Services (“HHS”) recently imposed a monetary penalty of \$31,000 against The Center for Children’s Digestive Health (“CCDH”), a health care provider, for furnishing protected health information (“PHI”) of at least 10,728 patients to a vendor without having a business associate agreement (“BAA”) in place. CCDH is a small covered entity that operates in seven (7) clinic locations across the State of Illinois.

The HHS Office for Civil Rights (“OCR”) initially investigated CCDH’s vendor, FileFax, Inc., which began receiving PHI from CCDH in 2003. The OCR subsequently began a compliance review of CCDH in August of 2015. The OCR ultimately determined that no BAA existed between the parties between 2003 and October of 2015, despite their longstanding business relationship.

Pursuant to the settlement with HHS, CCDH has agreed to pay the \$31,000 penalty and enter into a Corrective Action Plan (“CAP”) requiring it to develop written policies and procedures, to prepare training materials on those policies and procedures and to provide all such materials to HHS for review and approval. In addition, CCDH has agreed to distribute the policies and procedures to its workforce and to implement the approved training program. The CAP also requires CCDH to document its implementation of the training program and to provide annual reports to HHS relating to compliance initiatives. Finally, CCDH must identify its business associates and provide copies of the service agreements and BAAs by and between CCDH and the vendors. Overall, HHS will closely monitor CCDH to ensure that it addresses its compliance issues.

In this era of increased scrutiny by HHS (including the Phase 2 audit program), the CCDH resolution emphasizes the need for covered entities and business associates to ensure that updated BAAs are in place. Schenck Price Smith & King, LLP is available to assist in compliance reviews and preparation of the proper agreements.

*DISCLAIMER: This Alert is designed to keep you aware of recent developments in the law. It is not intended to be legal advice, which can only be given after the attorney understands the facts of a particular matter and the goals of the client.*

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