



March 3, 2014

**INSURER ASSESSED A RECORD FINE OF
\$6.8 MILLION FOR HIPAA VIOLATION**

By: Sharmila D. Jaipersaud, Esq.

On February 18, 2014, Puerto Rican insurer Triple-S Salud Inc. ("Triple-S") was assessed a fine of \$6.8 million for violating the Health Insurance Portability and Accountability Act ("HIPAA"). Notably, the assessment came from the Puerto Rico Health Insurance Administration, also known as ASES under the Spanish abbreviation ("ASES") and not the Department of Health and Human Services Office of Civil Rights ("OCR"). Federal fines are capped at \$1.5 million per incident, per year. The fine imposed by ASES against Triple-S is higher than any penalty assessed by the OCR for a HIPAA breach.

The fine was imposed because on September 20, 2013, Triple-S mailed a pamphlet to patients that visibly, but inadvertently, displayed their Medicare Health Insurance Claim Number ("HICN") through the envelope window of the mailing. The HICN is a government issued identification number and is considered protected health information ("PHI") under HIPAA. The HIPAA Privacy Rule requires that all PHI be protected. By failing to protect the HICN, Triple-S committed a privacy breach. There were 70,000 individuals that were affected by the privacy breach. Upon learning of the incident, Triple-S immediately responded by: (1) investigating the breach; (2) reporting it to the Puerto Rican and Federal government agencies; (3) issuing a breach notification to the affected individuals; and, (4) offering a year of identity protection and credit monitoring through a third-party provided to those individuals affected by the breach.

The fine was specifically imposed because of 13,336 individuals that were enrolled in a Triple-S Dual Eligible Medicare Plan were affected by the breach. The Dual Eligible Medicare Plan covers low-income individuals who are eligible for Medicare and Medicaid. Under the HIPAA violations provision in the contract between ASES and Triple-S, ASES assessed a fine of \$500 per affected individual, plus an additional \$100,000 penalty because Triple-S allegedly failed to cooperate with the investigation launched by ASES.

ASES will also impose administrative sanctions against Triple-S, including: (1) suspension of new enrollments in the Dual Eligible Medicare Plan, (2) imposing an obligation to notify the affected individuals of their right to be removed from the plan; and, (3) requiring Triple-S implement a corrective action plan.

Triple-S has until March 13, 2014 to request an administrative hearing on the ASES findings and proposed penalties. The hearing could result in a reduction in the penalties. While the penalties are historic, contractually, ASES had the ability to impose fines anywhere from \$500 to \$100,000 per affected individual. Furthermore, as a HIPAA covered entity, Triple-S could potentially face OCR enforcement action and fines. However, at this time the OCR investigation is pending and no further action has been taken.

Should you have any questions regarding the HIPAA Privacy Rule, or require assistance with complying with it, you may contact one of the health care attorneys at Schenck, Price, Smith & King, LLP.

DISCLAIMER: This Client 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. If someone you know would like to receive this Client Alert, please send a message to either Brian M. Foley, Esq., Chairman of Schenck, Price, Smith & King's Health Care Practice Group at bmf@spsk.com, or Sharmila D. Jaipersaud, Esq., an associate in the Health Care Practice Group at sdj@spsk.com.

FLORHAM PARK 220 Park Avenue PO Box 991 Florham Park, NJ 07932 Tel: 973-539-1000 www.spsk.com	PARAMUS Country Club Plaza 115 West Century Road Suite 100 Paramus, NJ 07652 Tel: 201-262-1600	SPARTA 351 Sparta Avenue Sparta, NJ 07871 Tel: 973-295-3670	NEW YORK 116 West 23 rd Street Suite 500 New York, NY 10011 Tel: 212-386-7628
---	---	---	---