



New Overtime Regulations

The DOL has issued a Final Rule modifying the standard salary threshold for full time salaried employees qualifying for the overtime exemption. The new threshold is \$913 per week or \$47,476 annually. This becomes effective December 1, 2016. Automatic updates to this threshold will occur every three years beginning January 1, 2020 to account for inflation. The Final Rule does not make any changes to the “duties test” which includes a set of executive, administrative and professional exemptions. Physicians and dentists are included among the learned professional exemption as are NPs, PAs, RNs, and dental hygienists. LPNs, however, are not included and are considered non-exempt. If you have any questions regarding this change or how to comply with these new regulations, please contact your consultant.

Phase 2 HIPAA Audits

The OCR has initiated Phase 2 of the HIPAA audit program. They are in the process of sending out emails to covered entities and business associates asking for verification of their contact information using the email address: OSOCRAudit@hhs.gov. They then plan to send out a questionnaire designed to gather data on the size and scope of the covered entity’s operations. From this audit pool, OCR will notify a random sample of covered entities and business associates of an impending desk audit. They may also perform more comprehensive on-site audits. From this they will develop their audit findings and submit them to the audited parties for review and comment. Within thirty business days OCR will return a final version of an audit report. This process will assist OCR in the development of additional technical assistance and corrective action plans to as-

sure compliance with HIPAA and to reduce the likelihood of breaches.

During the initial phase of the HIPAA audit program in 2011-12 over one hundred covered entities were audited. Most of the findings related to the security rules rather than the privacy rules. The primary finding was that a significant number of those audited failed to produce a complete and accurate security risk assessment. Other areas of concern were lack of an adequate breach notification policy and incomplete business associate agreements.

A recent \$750,000 settlement with a medical practice in North Carolina was the result of a failure to execute a proper business associate agreement with a vendor prior to conducting business with them.

Final Rule Implementing Section 1557 of the ACA

The Department of Health and Human Services has issued a Final Rule prohibiting discrimination based on race, color, national origin, sex, age, or disability in all health programs and activities receiving Federal financial assistance. While the rule specifically excludes Medicare Part B payments from the definition of Federal financial assistance, it does include CHIP, Medicaid, and Medicare Advantage, as well as the meaningful use incentive program.

The rule requires that all covered entities post a notice of consumer civil rights with respect to discrimination. For those with disabilities, the notice should provide information to access appropriate auxiliary aids and services. For those with limited English proficiency the notice should provide information to access language assistance services. The notice should appear in a conspicuous location available to patients, in significant patient communication and

publications and also on the practice web site. For those practices that employ 15 or more persons, the practice is required to have a grievance procedure for addressing complaints of discrimination and to designate an employee responsible for compliance with this rule.

The rule also requires the practice to post taglines in the top fifteen languages spoken by individuals in their state with limited English proficiency. All significant publications and communications to patients in a small size should contain the taglines for access to language assistance services in the two primary non-English languages used in the state. The deadline for these notice requirements is 90 days after the July 18, 2016 effective date.

The Office of Civil Rights is empowered with the enforcement of these new regulations. OCR will review and investigate any

complaints it receives and will continue to take steps towards voluntary compliance. The regulations also allow for a private cause of action for any claim of discrimination in healthcare including potential compensatory damages for plaintiffs.

Compliance with this nondiscrimination rule is not optional. It is important to be proactive and address these new requirements before the deadlines pass. Please contact your consultant for assistance.

If you have any questions or want additional information, please contact your consultant:

*Will Hunter at whunter@hci-ebs.com
Dan Tuckwiller at dtuckwiller@hci-ebs.com
Bryan Burke at bburke@hci-ebs.com
David Dobyns at ddobyns@hci-ebs.com
Bryson Goss at bgoss@hci-ebs.com
Dwight Martin at dmartin@hci-ebs.com
Ron Otwell at rotwell@hci-ebs.com
Barry Pillow at bpillow@hci-ebs.com
Barry Brooks at bbrooks@ihmsso.com
or call us at 1-800-572-5275*

