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**NEW LAW FOR HEALTH INFORMATION
ENCRYPTION REQUIREMENTS IN NEW JERSEY**

By: Sharmila D. Jaipersaud, Esq.

New Jersey Governor Chris Christie recently signed Senate Bill No. 562 into law, which requires health insurance carriers to protect patient information by ensuring such information is encrypted. The bill has been signed in response to a number of recent data breaches. One such breach involved two stolen laptops from Horizon Blue Cross Blue Shield of New Jersey in Newark that contained unencrypted information for approximately 840,000 policyholders in November 2013.

The new law applies to any insurance company, health service corporation, hospital service corporation, medical service corporation or health maintenance organization authorized to issue health benefit plans in New Jersey. Furthermore, the law requires such health insurance carrier encrypt "personal information" and defines that term to mean an individual's "first name or first initial and last name linked with any one or more of the following data elements: (1) Social Security number; (2) driver's license number or State identification card number; (3) address; or (4) identifiable health information."

Under the law, a health insurance carrier shall not "compile or maintain computerized records that include personal information, unless that information is secured by encryption or by any other method or technology rendering the information unreadable, undecipherable, or otherwise unusable by an unauthorized person." The law specifically states that compliance requires more than just a password protection computer program, "if that program only prevents general unauthorized access to the personal information, but does not render the information itself unreadable, undecipherable, or otherwise unusable by an unauthorized person operating, altering, deleting, or bypassing the password protection computer program."

The new law provides that a failure by a health insurance carrier to comply could also be considered a violation under the New Jersey Consumer Fraud Act, allowing for a private cause of action, and remedies which include ascertainable losses, attorney's fees and treble damages. The law will become effective on August 1, 2015. The Senate Statement on the bill indicates: "It is an unlawful practice and a violation of the consumer fraud law (C.56:8-1 et seq.) for a health insurance carrier to violate the provisions of this bill. Such violation is punishable by a monetary penalty of not more than \$10,000 for a first offense and not more than \$20,000 for a

second or any subsequent offense. In addition, a violation can result in cease and desist orders issued by the Attorney General and the awarding of treble damages and costs to the injured party.”

Notably, the New Jersey law affords patients greater protection than HIPAA, which does require protections, but not encryption. Health insurance carriers should be aware of the new law’s requirements and be prepared to comply by August 1, 2015. Health insurance carriers need to understand what additional steps they may need to take to ensure encryption of personal information and regulatory compliance. New Jersey joins Massachusetts and Nevada in imposing requirements for the protection of personal information that are stricter than Federal law.

Should you have any questions regarding the new law, or require assistance in 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 Sharmila D. Jaipersaud, Esq., an associate in the Health Care Practice Group at sdj@spsk.com.

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