Bill	Veto #	Date	Issue
S. 3201-A	289	12/15/04	would have provided retirement service credit for employees on leave without pay due to an occupational injury
S. 6214	290	12/15/04	would have established bumping and recall rights in the event of a layoff for employees in the labor and noncompetitive classes
S. 6215-A	291	12/15/04	would have allowed employees who are promoted to a position with a probationary term to bump back to the former position at the employee's option or upon a failure of probation

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HIPAA'S APPLICATION TO LOCAL GOVERNMENTS

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In 2003, the Health Insurance Portability and Accountability Act (HIPAA) mandated compliance with the privacy rule for some covered entities. Yet, others escaped mandatory compliance until April 2004. Despite the passing of these compliance dates, reports suggest that many local governments qualifying as HIPAA-covered entities have yet to perform meaningful compliance with the privacy rule. Questions about whether information is protected under the privacy rule abound on local government listservs. To ensure compliance, it is important to understand the impact of HIPAA's privacy rule on local governments.

Health care providers. Local governments typically are embroiled in HIPAA as health care providers or as sponsors of a group health plan. The HIPAA privacy rule applies to a local government if it provides medical services and uses electronic transactions in conjunction with those medical services. For example, if a municipality operates a hospital and seeks Medicare reimbursement for some of its services, the municipality would be a covered entity under HIPAA. Similarly, if a municipality operates an ambulance service, bills the patient's health insurer, and receives payment through an electronic funds transfer, then the municipality would be a covered entity.

Health insurance providers. A local government also can be affected by the HIPAA privacy rule if it offers health insurance to its employees. For these purposes, health insurance means medical, prescription drug, vision, or dental coverage. Employee assistance programs that offer counseling would be also included. In this instance, the local government is the "plan sponsor" of a "group health plan," making the plan a covered entity. If the plan is fully insured, then the insurance company will largely be responsible for HIPAA compliance. If the plan is self-insured, then the local government, as plan sponsor, is responsible for HIPAA compliance.

Covered entities are prohibited from making use of or disclosing protected health information (PHI) except as provided in the privacy rule. PHI is individually identifiable health information that relates to the patient's condition, the provision of care, or the payment for services provided. Examples of information that can make health information individually identifiable include: mere elements of dates directly related to an individual, license plate and VIN numbers, and geographic subdivisions smaller than a state.

Two important types of records are not covered by the privacy rule. First, employment records held by a covered entity as an employer are not considered PHI. Second, plans or programs providing workers' compensation or similar insurance are not covered entities under HIPAA. Thus, when requests for information are presented, the municipality should consider how it came to possess the information. If the information was obtained in its role as an employer, for example, it is less likely that the privacy rule will apply.

Local governments that qualify as HIPAA-covered entities have an extensive list of duties under the privacy rule. Covered entities must ensure that PHI will not be used or disclosed in violation of the privacy rule. These entities must also appoint compliance personnel, conduct training, and draft the applicable policies, procedures, and forms. These documents will need to address the various requirements specifically enumerated in the privacy rule.

Penalties. Violations of privacy rule provisions can result in civil money penalties of $100 per violation, capped at $25,000 per year for identical violations. Additionally, there are significant criminal penalties for intentional violations. Local governments can reduce their exposure to privacy rule liability by adopting a designation of hybrid entity status. Hybrid entities are individual entities that meet the HIPAA definition of a covered entity, but whose business activities are carried out through component functions, which may or may not be subject to HIPAA if they had been operating alone.

Consider a comparison of a city's public works department and its fire department. It is unlikely that any of the public works department's services would constitute the provision of medical services or operation of a health plan. However, if the fire department operates an ambulance service that includes the electronic transfer of PHI, the local government would qualify as a covered entity. By designating the business activities that qualify as covered components, local governments can reduce liability and administrative costs.

Finally, a covered entity must consider whether it uses business associates for PHI-related tasks. Business associates are persons who use PHI to perform functions or provide services on behalf of a covered entity. Covered entities and their business associates must execute contracts to establish the protection of PHI. These relationships most often arise where the local government contracts with an outside organization for information systems, billing, accounting, or legal services.

Local governments must consider their potential HIPAA liability and take action to comply with the privacy rule, if not completed already. As the public becomes more educated on its HIPAA-created privacy rights, enforcement activity is sure to increase. Moreover, local governments must plan for the privacy rule soon, as additional deadlines are looming. The mandatory compliance for HIPAA's next big rule — the security rule — occurs April 20, 2005. **Editor's note**: HIPAA was enacted to improve the Medicare and Medicaid programs and the effectiveness of the nation's health care system by promoting the development of a national health information system by establishing standards and requirements for the electronic transfer of health information. The U.S. Department of Health and Human Services was directed to issue regulations to protect the security and confidentiality of health information. Mr. Lauber has authored a more detailed article on HIPAA privacy rule compliance. Refer to "HIPAA Administrative Simplification: How the Privacy Rule Affects Municipal Ambulance Service Providers" in 35 Urban Lawyer 317 (2003) .

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EMPLOYEE MEDICAL RECORD CONFIDENTIALITY

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Since the finalization of the privacy regulations under the Health Insurance Portability and Accountability Act ("HIPAA"), there has been an increased focus on the confidentiality of employee medical records held by employers. The HIPAA privacy regulations protect individually identifiable health information that an employer obtains about an employee through a group health plan. The HIPAA privacy regulations do not, however, apply to employment-related medical information, including any such information secured through: