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February 14, 2017

Mark Zinder  
Mark Zinder & Associates, LLC  
1715 Green Hills Drive  
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Re: Application of Privacy Requirements to ICE Key Information

Dear Mark:

We have reviewed the information provided through the ICE key product and the potential application of the privacy rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). While the ICE key will usually include “protected health information” that is regulated by HIPAA, we do not believe that the access to that information by those providing financial advice will result in a violation of HIPAA’s privacy rules. Furthermore, access to any protected health information on the ICE key is only available with the consent of the individual.

## **Background**

HIPAA imposes privacy standards for information that is characterized as “protected health information.” Protected health information is individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or medium. The covered entities described in HIPAA are health plans, health care clearing houses and health care providers. Moreover, some insurance contracts that may provide incidental health benefits are excepted from the term “health plan.” These excepted benefits include long-term care, vision, disability and medical coverage under auto insurance.

Regardless of the “covered entity” status of a recipient of protected health information, the recipient is allowed full access to the information if the individual has provided consent to the disclosure.

The ICE key is a data storage device that can be accessed by a personal computer through a universal serial bus port. It allows an individual to record information that will assist first responders and health care providers in the case of a medical emergency. An individual can enter all of information desired through the edit screens on the key. The screens include the following:

- Name, birthdate, and contact information
- Height, weight, blood type and similar information
- Personal physician
- Health insurance provider
- Emergency contacts
- Prescription medications

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Dietary supplements  
Tobacco and alcohol use  
Current health conditions and allergies  
Major surgeries and recent hospitalizations  
Childhood medical conditions  
Family medical history

A user can also load in .pdf format legal documents. This is intended to include information for health care providers, such medical directives, medical power of attorney, living will and the like.

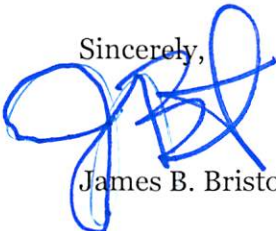
The ICE key can be purchased directly by an individual. We understand that many are distributed by financial and investment advisors who provide the ICE key as a courtesy to their individual clients. In some instances, the advisor may assist his or her client in inserting data into the information screens on the ICE key. Any access to personal data and health information requires the consent of the individual.

### **Analysis**

The ICE key is designed and intended to store information that includes individually identifiable health information. Under HIPAA, this is protected health information. Anyone who is a "covered entity" under HIPAA will be subject to the limitations on use and transmission of this information prescribed by the law. This will include those who provide medical services to an individual and gain access to the information on the ICE key. For this purpose, the ICE key includes a consent to allow first responders and other providers to freely use the data on the key.

HIPAA restrictions do not apply to those who are merely providing financial advice to an individual, even if that advice involves the acquisition of investment and insurance products. Moreover, the individual is necessarily providing explicit consent when the data on the ICE key is shared with a financial advisor. For these reason, the distribution of the ICE key through financial advisors does not raise HIPAA privacy concerns.

I trust that this analysis is helpful. Please advise if there are further questions or comments on this discussion.

Sincerely,  
  
James B. Bristol

JBB:llm