

OCR Launches HIPAA Audit Program

Last week, the U.S. Department of Health and Human Services Office for Civil Rights ("OCR") announced the commencement of its HIPAA audit program. OCR is ramping up its efforts to ensure compliance with the security and privacy rules under Health Insurance Portability and Accountability Act (HIPAA) with the launch of its new audit program. The HITECH Act passed in 2009 mandates periodic audits of "covered entities" and "business associates." The launch of the audit program fulfills this mandate.

Earlier this month, OCR, which is responsible for the enforcement of HIPAA, delivered the first handful of audit notification letters. OCR plans to conduct up to 150 audits by the end of next year. Several months ago, the Department of Health and Human Services awarded a \$9.2 million contract to the consulting firm KPMG to develop the protocols and conduct the HIPAA audits. The audits will include site visits, interviews with company management, the inspection of physical features and operations, and a review of compliance with regulatory requirements.

Hospitals, physicians and other healthcare providers, health plans and other covered entities, and their business associates, are all audit targets. Business associates who perform functions or activities or provide services for, or on behalf of, covered entities, such as third party administrators that assist with claims processing, certain accounting and legal advisors, consultants performing utilization reviews, health care clearing houses, medical transcriptionists, pharmacy benefits managers and others should note that OCR has specifically warned that they too will be the subject of audits. With the passage of the HITECH Act, most of the requirements in HIPAA's Security Rule now directly apply to business associates, and business associates are subject to the same potential civil and criminal penalties as covered entities. Business associates and covered entities alike must ensure that they are in full compliance with HIPAA.

The risks of noncompliance have never been higher for covered entities and business associates under HIPAA. The HITECH Act extended the scope of criminal penalties and drastically increased potential civil penalties for HIPAA violations, allowing fines of up to \$1.5 million per calendar year for the wrongful disclosure of protected health information, in addition to penalties for knowing and improper HIPAA violations ranging up to \$250,000 and 10 years of jail time. Moreover, employees of covered entities and business associates can also be held personally liable for certain HIPAA violations. There has been a significant increase in HIPAA enforcement over the last two years, with enforcement in 2011 setting records. This year alone, the OCR has extracted a number of large settlements and fines for HIPAA violations, including a \$4.3 million civil fine from Cignet Health, a \$1 million settlement from Massachusetts General Hospital, and a \$865,000 settlement from UCLA Health System.

With increasingly harsh penalties for HIPAA violations and the advent of OCR audits, covered entities and business associates need to invest in effective HIPAA compliance programs. HLB has extensive experience assisting covered entities and business associates with all aspects of HIPAA compliance work, including self-audits, risk analysis, drafting of policies and procedures and personnel training.

*For more information on how HLB can serve your needs, please contact **Stephen Phillips**, **Paul Smith**, **Clark Stanton** or **Paul Deeringer** in the San Francisco office at 415.875.8500 or **Hope Levy-Biehl** in the Los Angeles office at 310.551.8111.*

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