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HITECH's Much-Anticipated HIPAA Audits Announced; 150 Unlucky Entities Will Soon Learn Their Fate

By Jeff Drummond

Health care providers, health plans, and other "covered entities" under HIPAA, along with their business associates, have a new reason to dust off their HIPAA compliance manuals: the HIPAA enforcement authorities are now taking proactive steps to ensure compliance. Rather than simply responding to complaints, HHS' Office of Civil Rights has just announced that it will soon start auditing for HIPAA compliance.

In early 2009, as a part of the Stimulus Act, Congress passed the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which amended portions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). One component of HITECH, Section 13411, required the US Department of Health and Human Services to conduct periodic audits of HIPAA covered entities and business associates to gauge compliance with HIPAA's privacy and security requirements.

HHS hired the consulting firm of Booz Allen Hamilton to help it develop audit protocols, and later hired KPMG to assist in the actual auditing of healthcare providers and health plans.

Last week, HHS' Office of Civil Rights announced a pilot phase of audits, to commence this month and conclude by the end of 2012. According to the OCR website, audit targets were selected over the last two months, although no targets have been publicly identified and no entities have acknowledged that they have been selected to be audited. Any covered entity or business associate is a possible audit target, but it is expected that the initial batch of audits will concentrate on covered entities and will include a wide range of entities.

Over the next six months, OCR will test-audit approximately 20 entities, after which it will expand the initial batch of audits to approximately 150 entities. OCR has stated that it intends to use the audits to determine overall compliance with HIPAA obligations and to develop technical assistance and guidance, but if specific problems are encountered with respect to an audit target, OCR might commence a compliance review of that entity.

Given the large number of potential targets and the small sample size, it is unlikely that any particular HIPAA covered entity would be subject to this round of audits. However, the fact that OCR is commencing these audits with such fanfare is a strong indicator that HIPAA compliance is clearly on the radar of the regulatory agency. HIPAA compliance is an ongoing, dynamic process; HIPAA covered entities and business associates would be well advised to review their HIPAA policies and procedures to ensure that they are in compliance with HIPAA, HITECH, and other recent revisions.

If you have any questions, please contact **Jeff Drummond** at 214.953.5781 or jdrummond@jw.com.

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