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Re: HHS Announces Immediate Start to HIPAA Audit Program

Dear Clients and Other Friends:

Last week, the Department of Health and Human Services (“HHS”) announced that it will immediately begin a pilot audit program, designed to assess compliance with the Health Insurance Portability and Privacy Act of 1996 (“HIPAA”) Privacy and Security Rules and Breach Notification procedures. The audit program will be run through the HHS’s Office of Civil Rights (“OCR”) and will examine a wide range of covered entities, including group health plans.

As part of the American Recovery and Reinvestment Act of 2009, the HITECH Act amended HIPAA Privacy and Security Rules by adding breach notification procedures as well as requiring HHS to establish an audit program to ensure that covered entities and business associates are complying with HIPAA. This pilot audit program replaces OCR’s prior enforcement methods of examining complaints with a formal audit program. Specifically, this pilot audit program will be used to assess how covered entities are complying with HIPAA currently, discover issues that have not been revealed under current reviews, and identify best practices and issues to be addressed in future guidance.

When will the HIPAA audits begin?

The pilot audit program begins immediately. Initial audits will start as soon as November 2011. Feedback and experience from the initial audits will be used to conduct the remaining audits that are planned to begin in May 2012.

Who will be audited?

For the pilot audit program taking place in 2011-2012, OCR will select 150 covered entities of different types and sizes. Covered entities include group health plans of all sizes, individual and organization providers of health services, and health care clearinghouses. Business associates will be eligible for future audits. It is important to note that, generally, all covered entities and business associates are eligible to be audited under the HITECH Act.

What will happen when a covered entity is selected for an audit?

If your organization is selected as one of the initial 150 covered entities, you will receive written notification of the audit from the OCR. Covered entities will be required to provide documentation of privacy and security practices as well as to undergo a site visit. Next, the auditors will prepare the audit report. This report will include how the audit was conducted,

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findings of the audit, steps to address any compliance concerns identified, and best practices used by the covered entity. If the audit reveals a serious compliance issue, OCR may request a compliance review and may result in civil penalties or compliance settlements.

What action steps should covered entities and business associates be taking now?

Although the chance of being selected as part of the initial 150 covered entities is very small, covered entities (such as group health plans and health care providers) should take this opportunity to review their HIPAA compliance and to see what needs to be updated. This includes:

- reviewing and updating written HIPAA policies and procedures, as necessary, for privacy and security rules and breach notification requirements;
- reviewing and updating notices to individuals, updating the model notices as necessary;
- ensuring that employees with access to protected health information have received the necessary HIPAA training;
- reviewing and updating business associate agreements; and
- verifying that privacy and security rules in the written documents are being put into practice, and if not, revising the documents to reflect current practice.

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We have strong experience with HIPAA compliance matters, including compliance documents, policies and procedures, notices, business associate agreements and training. Please contact us if we may be of assistance in answering your questions about the pilot audit program or in reviewing your organization's current HIPAA compliance practices.

Sincerely,

Holly A. Fistler