

HITECH Audit Protocols Released by OCR

On June 26, 2012, the Office of Civil Rights (“OCR”) of the Department of Health and Human Services (“HHS”) released the protocols developed to conduct audits required by the Health Information Technology for Economic and Clinical Health Act (HITECH) under the American Recovery and Reinvestment Act of 2009. Section 13411 of HITECH requires HHS to provide for audits to ensure that covered entities and business associates are in compliance with the regulations promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”).

An audit pilot program, in which OCR intends for 115 covered entities to be audited by KPMG to assess privacy and security compliance, began in November 2011. Twenty covered entities, including several healthcare clearinghouses, group health plans, hospitals and other providers, were audited in the first quarter of 2012 to test the initial audit protocols developed by OCR. The remaining audits in the pilot program, which will be informed by the results of the first twenty audits, will be completed by the end of 2012. OCR has indicated that all covered entities and business associates are eligible for an audit, and will select a broad range of types and sizes of covered entities and business associates for the remainder of the pilot program.

The protocols released by OCR contain detailed audit procedures used to assess covered entities’ processes, controls, and policies in connection with their obligations under the HIPAA Privacy and Security Rules and Breach Notification standards. Each audit is tailored to address the elements relevant to the type of covered entity being audited. The audit protocol module for the Privacy Rule addresses requirements for notices of privacy practices for protected health information (“PHI”), rights to request privacy protection for PHI, access of individuals to PHI, administrative requirements, uses and disclosures of PHI, amendment of PHI, and accounting of disclosures. In addition, the Privacy Rule module covers requirements for the Breach Notification Rule. The Security Rule module includes audit procedures that concentrate on requirements for administrative, physical, and technical safeguards.

Covered entities and business associates should consider conducting internal reviews of their policies and procedures regarding the HIPAA Privacy and Security Rules and Breach Notification Standards in light of the audit protocols developed by OCR.

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