

November 2011



Health Care Bulletin

OCR'S HIPAA PILOT AUDIT PROGRAM BEGINS NOVEMBER 2011

By: Kelly J. Greene

HHS Office for Civil Rights ("OCR") announced last week that its pilot for HIPAA compliance audits will begin this month and end in December 2012. The American Recovery and Reinvestment Act of 2009 requires periodic audits of covered entities and business associates to ensure compliance with the HIPAA Privacy and Security Rules and Breach Notification standards.

In this first round of audits, OCR plans to audit a diverse group of up to 150 covered entities. Business associates will be audited in future audits. The OCR will notify those covered entities it selects to be audited and will request that the covered entities' documentation regarding HIPAA Privacy and Security compliance be sent to the OCR for review within 10 business days of the request.

During the pilot program, every audit will include a site visit by the auditor and an audit report. Covered entities will be notified 30 to 90 days prior to the site visit. Site visits will usually last between 3 and 10 days and include interviews with key personnel and observations of processes and operations. After a site visit, the auditor will provide the covered entities with a draft final report that contains a description of how the audit was conducted, the findings, and the covered entity's actions in regard to the findings. Covered entities will have 10 business days to submit a written response to the

draft final report. The response may address any concerns and describe steps taken by the covered entity in response to concerns identified by the auditor in the draft final report.

The auditor will send its final report to the OCR within 30 business days of receiving a written response. Final reports will include the steps taken by a covered entity in response to any compliance concerns and will describe the covered entity's best practices related to HIPAA Privacy and Security compliance.

The OCR indicated in its announcement of the pilot audit program that it will mainly use the information collected by the audits to improve HIPAA Privacy and Security compliance. However, the OCR also stated that any serious compliance issue found during an audit may result in a compliance review.

For more information regarding the HIPAA Privacy and Security compliance audits or HIPAA in general or if you have been selected for an audit and need assistance in preparing for or responding to the audit, please contact a member of Benesch's Health Care Department:

The link to the OCR's announcement is:
<http://www.hhs.gov/ocr/privacy/hipaa/enforcement/audit/index.html>

Benesch's Health Care Practice Group

Cleveland

Harry Brown (216) 363-4606 or hbrown@beneschlaw.com

Greg Binford (216) 363-4617 or gbinford@beneschlaw.com

W. Clifford Mull (216) 363-4198 or cmull@beneschlaw.com

Dan O'Brien (216) 363-4691 or dobrien@beneschlaw.com

Alan Schabes (216) 363-4589 or aschabes@beneschlaw.com

Columbus

Frank Carsonie, Chair (614) 223-9361 or fcarsonie@beneschlaw.com

Janet Feldkamp (614) 223-9328 or jfeldkamp@beneschlaw.com

Ben Parsons (614) 223-5366 or bparsons@beneschlaw.com

Meredith Rosenbeck (614) 223-5353 or mrosenbeck@beneschlaw.com

Marty Sweterlitsch (614) 223-9367 or msweterlitsch@beneschlaw.com

Indianapolis

Kelly J. Greene (317) 685-6105 or kgreene@beneschlaw.com

Robert W. Markette, Jr. (317) 685-6128 or rmarkette@beneschlaw.com

White Plains

Ari J. Markenson (914) 682-6822 or amarkenson@beneschlaw.com

www.beneschlaw.com

As a reminder, this Advisory is being sent to draw your attention to issues and is not to replace legal counseling.

UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 DISCLOSURE: TO ENSURE COMPLIANCE WITH REQUIREMENTS IMPOSED BY THE IRS, WE INFORM YOU THAT, UNLESS EXPRESSLY STATED OTHERWISE, ANY U.S. FEDERAL TAX ADVICE CONTAINED IN THIS COMMUNICATION (INCLUDING ANY ATTACHMENTS) IS NOT INTENDED OR WRITTEN TO BE USED, AND CANNOT BE USED, FOR THE PURPOSE OF (i) AVOIDING PENALTIES UNDER THE INTERNAL REVENUE CODE, OR (ii) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TRANSACTION OR MATTER ADDRESSED HEREIN.