

# “What keeps you up at night?”

## HHS Announces HIPAA Privacy and Security Audits

By Bruce D. Armon, Dan S. Brandenburg and Nicholas C. Stewart

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### SUMMARY

On November 8, 2011, the Office of Civil Rights (“OCR”) in the U.S. Department of Health and Human Services (“HHS”) announced that it will conduct audits of HIPAA-covered entities to ensure compliance with HIPAA’s privacy, security and breach notification standards.

### WHAT HAPPENED?

As part of the American Recovery and Reinvestment Act of 2009, Congress required HHS to conduct audits to ensure compliance with HIPAA’s privacy, security and breach notification standards. Beginning November 2011, OCR is piloting a program to perform up to 150 of these audits. OCR wants to identify risks and vulnerabilities and, thereafter, assemble a list of best practices. The pilot phase should conclude by December 2012.

Every HIPAA-covered entity is eligible for an audit. OCR intends to examine “as wide a range of types and sizes of covered entities as possible.” This includes individual and organizational health care providers as well as health plans “of all sizes and functions.” Importantly, business associates will be audited in the future.

Those selected for an audit are required to produce a paper trail, documenting their privacy and security compliance efforts. They can also expect a site visit, lasting 3-10 days, during which OCR will interview personnel, and evaluate processes and operations. OCR’s final report will make special mention of those steps the entity is taking to resolve its compliance issues. If deemed necessary, the OCR may undertake a subsequent, and more comprehensive, review.

More information on this audit program is available on OCR’s website at <http://www.hhs.gov/ocr/privacy/hipaa/enforcement/audit/index.html>.



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### HOW DOES THIS NEW POLICY IMPACT HIPAA-COVERED ENTITIES?

Every covered entity, big or small, faces the prospect of being audited by OCR. Health care providers, health plans and all covered entities should ensure that they are compliant with HIPAA. If a covered entity is audited, OCR's final report will take into account what steps the covered entity is currently taking to become compliant.

This initiative is only the beginning. Those covered entities and business associates who avoid the pilot phase of the audit initiative are not immune from future attention by OCR. Every covered entity should initiate a self-audit to ensure it is HIPAA compliant and prepared.

If you have any further questions about this audit program or how you can prepare yourself, please do not hesitate to contact Dan Brandenburg and Joanne Jacobson of Saul Ewing's Labor, Employment and Employee Benefits Practice Group, or Bruce Armon and Laura Katz of the Health Practice Group.

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