



# Compliance Alert

March 8, 2007

***Compliance Alert, provided by Group Benefit Services, gives you the most up to date information regarding industry news as well as legislation and regulatory activities affecting your health plan.***

## **TOPIC: HIPAA PRIVACY & SECURITY ENFORCEMENT**

Over the past few weeks, GBS has been receiving some interesting information regarding the latest statistics in Privacy Complaints. Below is a summary of the information that has been published.

The HHS Office for Civil Rights (OCR) has jurisdiction over the HIPAA Privacy Rule. The OCR has reported that out of the 24,000 complaints it has received since April 2003 only 6,000 warranted further action. Of the 6,000 "core complaints", 4,000 were resolved informally with the Covered Entities. The remaining 2,000 complaints resulted with the covered entities not violating the HIPAA Privacy Rule.

The top five complaints received by OCR have been:

- ✓ The impermissible use or disclosure of an individual's identifiable health information;
- ✓ The lack of adequate safeguards to protect identifiable health information;
- ✓ Refusal or failure to provide the individual with access to or a copy of his or her records;
- ✓ Disclosure of more data than is minimally necessary to satisfy a request for information;
- ✓ Failure to have the individual's valid authorization for a disclosure that requires one.

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The top targets of OCR complaints are:

- ✓ Private healthcare practices
- ✓ General Hospitals
- ✓ Outpatient facilities
- ✓ Group Health Plans
- ✓ Health Insurance Carriers
- ✓ Pharmacies

Presently, the OCR receives approximately 500 to 600 complaints a month, and of that amount they have referred 366 cases to the Department of Justice for possible criminal prosecution. To date, there have been at least 4 criminal cases invoking the HIPAA Privacy Rule, but none of those 4 originated from the OCR complaint system. Subsequently, 3 criminal cases have been filed by the Justice Department with 2 of them resulting in convictions.

**The Centers for Medicare and Medicaid Services (CMS)** has jurisdiction over the HIPAA Security Rule as well as the security of the electronic Protected Health Information. As of the end of 2006, CMS received 519 complaints regarding compliance with the transaction and code set standards. CMS has imposed corrective action plans on 2 separate health plans for violating the standards under HIPAA.

The top reasons for transaction and code set standards complaints are:

- ✓ Compliant Transactions are being rejected
- ✓ Problems with Trading Partners
- ✓ Problems involving Code Sets

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The top reasons for Security complaints are:

- ✓ Information Access Management
- ✓ Security Awareness and Training
- ✓ Access Control

For more than a decade now, health information privacy/security has been in the forefront of topics covering issues regarding the collection, use and disclosure of patient information. Based upon all of the information shared and training provided relating to these topics and now with the addition of these disclosed statistics, it is important to realize the importance of HIPAA Privacy and Security, and be aware of the ramifications for non-compliance.

***If you have any questions regarding this information, please contact your Group Benefit Services Account Manager at 1.800.638.6085.***

***This communication is not intended to be legal advice and should not be construed as legal advice. If you have any legal questions or concerns about your plan, GBS recommends seeking counsel from an ERISA attorney.***

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