

### **HIPAA Privacy and Security Audit Program Begins This Month**

**November 18, 2011**

HIPAA-covered entities, including employer health plan sponsors, should watch the mail for a letter from the Office for Civil Rights (OCR).

The Health Information Technology for Economic and Clinical Health (HITECH) Act requires the Department of Health and Human Services to conduct periodic audits of covered entities and business associates to ensure compliance with the HIPAA privacy and security rules and breach notification standards. Beginning this month and running through 2012, OCR's new pilot program will audit 150 covered entities.

OCR's independent third-party auditor will select a wide variety of covered entities for audit during the pilot program. Selected covered entities will have 10 days to provide documentation of their HIPAA privacy and security compliance after they receive notification.

During the pilot program, every audit will include a site visit during which auditors will interview key personnel and observe processes and operations to help determine compliance. Covered entities should expect between 30 and 90 days' notice prior to a site visit, which will last between 3 and 10 business days, depending upon the complexity of the covered entity and the access given to materials and staff.

Following the site visit, the auditor will provide the covered entity with a draft report, and the covered entity will have 10 business days to provide written comments back to the auditor. The auditor will then submit a final audit report to OCR.

OCR has presented the audit pilot program as a "compliance improvement activity" aimed at enabling OCR to better understand compliance efforts, additional types of technical assistance that would be useful, and the effectiveness of various corrective actions. However, covered entities should be mindful that if an audit reveals a serious compliance issue, OCR may initiate a compliance review to address the problem.

Covered entities should consider conducting a "self-audit" before OCR comes knocking to ensure the following:

- Business associate agreements are up to date
- Current HIPAA privacy and security documents, procedures, and notices are in place
- Individuals who handle protected health information are trained, and their training is documented

Morgan Lewis can help covered entities prepare for a possible OCR audit and, if necessary, help manage the audit. If you have any questions, please contact one of the following Morgan Lewis attorneys:

**Chicago**

David Ackerman	312.324.1170	<a href="mailto:dackerman@morganlewis.com">dackerman@morganlewis.com</a>
Andy R. Anderson	312.324.1177	<a href="mailto:aanderson@morganlewis.com">aanderson@morganlewis.com</a>
Saghi “Sage” Fattahian	312.324.1744	<a href="mailto:sfattahian@morganlewis.com">sfattahian@morganlewis.com</a>
Brian D. Hector	312.324.1160	<a href="mailto:bhector@morganlewis.com">bhector@morganlewis.com</a>

**Dallas**

John A. Kober	214.466.4105	<a href="mailto:jkober@morganlewis.com">jkober@morganlewis.com</a>
---------------	--------------	--

**New York**

Craig A. Bitman	212.309.7190	<a href="mailto:cbitman@morganlewis.com">cbitman@morganlewis.com</a>
Gary S. Rothstein	212.309.6360	<a href="mailto:grothstein@morganlewis.com">grothstein@morganlewis.com</a>

**Philadelphia**

Robert L. Abramowitz	215.963.4811	<a href="mailto:r Abramowitz@morganlewis.com">r Abramowitz@morganlewis.com</a>
Brian J. Dougherty	215.963.4812	<a href="mailto:bdougherty@morganlewis.com">bdougherty@morganlewis.com</a>
I. Lee Falk	215.963.5616	<a href="mailto:ilfalk@morganlewis.com">ilfalk@morganlewis.com</a>
Amy Pocino Kelly	215.963.5042	<a href="mailto:akelly@morganlewis.com">akelly@morganlewis.com</a>
Robert J. Lichtenstein	215.963.5726	<a href="mailto:rlichtenstein@morganlewis.com">rlichtenstein@morganlewis.com</a>
Joseph E. Ronan, Jr.	215.963.5793	<a href="mailto:jronan@morganlewis.com">jronan@morganlewis.com</a>
Steven D. Spencer	215.963.5714	<a href="mailto:sspencer@morganlewis.com">sspencer@morganlewis.com</a>
Mims Maynard Zabriskie	215.963.5036	<a href="mailto:mzabriskie@morganlewis.com">mzabriskie@morganlewis.com</a>
David B. Zelikoff	215.963.5360	<a href="mailto:dzelikoff@morganlewis.com">dzelikoff@morganlewis.com</a>
Georgina L. O’Hara	215.963.5188	<a href="mailto:go’hara@morganlewis.com">go’hara@morganlewis.com</a>

**Pittsburgh**

Lisa H. Barton	412.560.3375	<a href="mailto:lbarton@morganlewis.com">lbarton@morganlewis.com</a>
John G. Ferreira	412.560.3350	<a href="mailto:jferreira@morganlewis.com">jferreira@morganlewis.com</a>
Lauren B. Licastro	412.560.3383	<a href="mailto:llicastro@morganlewis.com">llicastro@morganlewis.com</a>
R. Randall Tracht	412.560.3352	<a href="mailto:rtracht@morganlewis.com">rtracht@morganlewis.com</a>

**Washington, D.C.**

Althea R. Day	202.739.5366	<a href="mailto:aday@morganlewis.com">aday@morganlewis.com</a>
David R. Fuller	202.739.5990	<a href="mailto:dfuller@morganlewis.com">dfuller@morganlewis.com</a>
Mary B. (Handy) Hevener	202.739.5982	<a href="mailto:mhevener@morganlewis.com">mhevener@morganlewis.com</a>
Gregory L. Needles	202.739.5448	<a href="mailto:gneedles@morganlewis.com">gneedles@morganlewis.com</a>

**San Francisco**

W. Reece Hirsch	415.442.1422	<a href="mailto:rhirsch@morganlewis.com">rhirsch@morganlewis.com</a>
-----------------	--------------	--

**Palo Alto**

S. James DiBernardo	650.843.7560	<a href="mailto:jdibernardo@morganlewis.com">jdibernardo@morganlewis.com</a>
Zaitun Poonja	650.843.7540	<a href="mailto:zpoonja@morganlewis.com">zpoonja@morganlewis.com</a>

## **About Morgan, Lewis & Bockius LLP**

With 22 offices in the United States, Europe, and Asia, Morgan Lewis provides comprehensive transactional, litigation, labor and employment, regulatory, and intellectual property legal services to clients of all sizes—from global Fortune 100 companies to just-conceived startups—across all major industries. Our international team of attorneys, patent agents, employee benefits advisors, regulatory scientists, and other specialists—nearly 3,000 professionals total—serves clients from locations in Beijing, Boston, Brussels, Chicago, Dallas, Frankfurt, Harrisburg, Houston, Irvine, London, Los Angeles, Miami, New York, Palo Alto, Paris, Philadelphia, Pittsburgh, Princeton, San Francisco, Tokyo, Washington, D.C., and Wilmington. For more information about Morgan Lewis or its practices, please visit us online at [www.morganlewis.com](http://www.morganlewis.com).

## **IRS Circular 230 Disclosure**

To ensure compliance with requirements imposed by the IRS, we inform you that 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. For information about why we are required to include this legend, please see <http://www.morganlewis.com/circular230>.

This LawFlash is provided as a general informational service to clients and friends of Morgan, Lewis & Bockius LLP. It should not be construed as, and does not constitute, legal advice on any specific matter, nor does this message create an attorney-client relationship. These materials may be considered **Attorney Advertising** in some states. Please note that the prior results discussed in the material do not guarantee similar outcomes.

**© 2011 Morgan, Lewis & Bockius LLP. All Rights Reserved.**