In March, the US Department of Health & Human Services’ Office for Civil Rights (OCR) announced the launch of its next phase of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) audits of covered entities and their business associates. Click here for more information.

“This news should be a wake-up call for ASCs and all health care providers covered under HIPAA to take a close look at what they are doing and have in place concerning HIPAA compliance,” says Lani Dornfeld, head of law firm Brach Eichler’s Palm Beach, Florida, office and a member of the firm’s health law practice group.

“If the OCR sees a serious lack of HIPAA compliance when it performs these audits, there will be further scrutiny of that provider or business associate outside of the audit process,” she says. “OCR will separately engage in a compliance review of that particular organization. There have already been quite a number of heavy fines and penalties this year against organizations found not to be in compliance with HIPAA, and there are likely more to come.”
If the OCR sees a serious lack of HIPAA compliance when it performs these audits, there will be further scrutiny of that provider or business associate outside of the audit process”

— Lani Dornfeld, Brach Eichler

On the surface, it might seem like the announcement of “Phase 2” of the HIPAA audit program is not significant for ASCs as “OCR indicated that these audits are meant to be used as a tool to measure compliance,” Dornfeld notes. The audits, however, might ultimately serve to identify covered entities, like ASCs, and business associates that are not in compliance with HIPAA.

What You Need to Do

Properly protecting patient privacy and complying with HIPAA can prove challenging. “HIPAA is such a complex law with very onerous requirements,” Dornfeld says. “As a result, compliance in some organizations may be lacking. Providers are taking some measures to protect patient information, but they are not necessarily doing what HIPAA requires, and that can get you into trouble.
“To me, the time, energy and money that will be spent by a provider to deal with the serious consequences of noncompliance will be far more extreme than the cost to put in place and maintain a proper HIPAA compliance program,” she says. “Some providers believe this cost to be prohibitive but it will seem like nothing in comparison to OCR penalties.”

A HIPAA compliance program includes many components. Dornfeld advises ASCs to closely examine the HIPAA Breach Notification, Privacy, and Security Rules. They should also perform a risk analysis, as mandated under the security rule, to identify and address risks and vulnerabilities to electronic medical information. “You must have the proper people involved in these efforts, which includes privacy officers and security officers,” she adds.

ASCs also would be wise to provide ongoing HIPAA training, she says. “While annual training in a formal way is expected by the government, periodic training throughout the year is critical. This can include providing information in emails, inter-office memos and during discussions at staff meetings. This kind of intermittent, informal training serves to remind staff of its legal obligations and help prevent potential negligent breaches.”

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Dornfeld says some ASCs might be coming up short in compliance efforts due to a misunderstanding concerning their electronic systems. “Just because you are told a system is HIPAA compliant does not mean your ASC is HIPAA compliant. That is a really big misconception and leads some providers to believe they do not need to do anything more than use that system.”

Doing what is necessary to put together a proper HIPAA program is simply the best protection against incidents and governmental interventions, she says. “It is a preventative measure and one every provider must be undertaking.”

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