

UNDER SCRUTINY:

SHB's Government Enforcement & Compliance Update

GOVERNMENT ENFORCEMENT & COMPLIANCE

Our clients face unprecedented enforcement scrutiny and novel legal theories. Today, government enforcement actions can include civil as well as criminal investigations and litigation. They can involve a host of independent actors including federal and state prosecutors, regulators, whistleblowers and their counsel, and class-action attorneys. These cases must be defended under the watchful eye of investors and the public.

Our Government Enforcement & Compliance Practice consists of former prosecutors – including a former U.S. Attorney, former Justice Department officials and even former corporate executives – who counsel and defend companies, their executives and employees in the full range of criminal, civil and regulatory government enforcement actions at the state and federal level. We counsel clients on how to avoid enforcement scrutiny. When investigations do arise, however, we work with our clients to resolve them as efficiently, cost-effectively and quietly as possible.



HHS SETTLES CHARGES OF VIOLATIONS OF HIPAA PRIVACY RULE; RECENT ACTIONS SUGGEST NOW IS A GOOD TIME TO EVALUATE HIPAA POLICIES AND PROCEDURES

The U.S. Department of Health and Human Services (HHS) recently announced the settlement of charges against Rite Aid Corp. for alleged violations of the Health Information Portability and Accountability Act of 1996 (HIPAA) Privacy Rule. Rite Aid also settled a coordinated action with the Federal Trade Commission (FTC).

The charges stemmed from an investigation undertaken by the Office of Civil Rights (OCR), the agency that enforces HIPAA Privacy and Security Rules, following incidents videotaped by the media in which pharmacies were shown to have disposed of prescriptions and labeled pill bottles containing individuals' identifiable information in industrial trash containers readily accessible to the public. This settlement, reached on July 27, 2010, follows on the heels of another joint FTC and OCR investigation into CVS Caremark Corp. in 2009.

Among other things, OCR alleged that Rite Aid failed to implement adequate policies and procedures to appropriately safeguard patient information during the disposal process, failed to adequately train employees on how to dispose of such information properly, and did not maintain a sanctions policy for members of its workforce who failed to properly dispose of patient information.

Prosecution of these actions signals OCR's intent to more aggressively enforce the HIPAA Privacy and Security Rules and the FTC's increased effort to exercise its Section 5 enforcement authority over not just consumer data, but also employee information.

This, coupled with HIPAA's expanded reach as a result of the HITECH Act and HHS's recent notice of proposed rulemaking to modify the HIPAA Privacy, Security, and Enforcement Rules, suggests that now is a good time for covered entities, business associates and subcontractors of covered entities and business associates to evaluate and update, as necessary, their policies and procedures for protecting the privacy and security of protected health information.

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HHS has offered several items in the last month to help covered entities, business associates and subcontractors evaluate their policies and procedures. On July 14, HHS published its "Final Guidance on Risk Analysis Requirements" under the HIPAA Security Rule. The final guidance is intended to assist organizations in identifying and implementing the most effective and appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of electronic protected health information under the security rule.

In conjunction with the Rite Aid settlement, HHS also published a "Frequently Asked Questions About the Disposal of Protected Health Information," in which HHS suggests methods to properly dispose of protected health information. In light of the apparent increased risk of government enforcement and heightened contractual obligations that covered entities, business associates, and subcontractors are most likely being subjected to under post-HITECH business associate agreements, organizations must make sure their policies and procedures for the protection of protected health information are adequate and up-to-date.

If you have questions about this update, or would like to discuss this topic further, please contact [Carol Poindexter](#) or [Allen Jones](#).

The choice of a lawyer is an important decision and should not be based solely upon advertisements.