

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.

SWEEPING CHANGES TO HIPAA RULES PROPOSED

The U.S. Department of Health and Human Services (HHS) has announced its highly anticipated notice of proposed rulemaking (NPRM) to modify the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule), the Security Standards for the Protection of Electronic Protected Health Information (Security Rule), and the rules pertaining to Compliance and Investigations, Imposition of Civil Money Penalties, and Procedures for Hearings (Enforcement Rule) (collectively, the HIPAA Rules) issued under the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The proposed modifications, released on July 8, 2010, have been described by HHS Secretary Kathleen Sibelius as the “most sweeping improvements” to the HIPAA Rules since the date they were enacted.

One of the stated purposes of the modifications is to implement the recent statutory amendments under the Health Information Technology for Economic and Clinical Health Act (HITECH Act), Title XIII of the American Recovery and Reinvestment Act of 2009. The HITECH Act does not, however, account for all of the proposed changes in the NPRM. HHS is also taking the opportunity to “improve the workability and effectiveness of the HIPAA Rules,” resulting in several changes not previously anticipated under the HITECH Act.

The proposed modifications include provisions:

- Extending the applicability of certain of the Privacy and Security Rules’ requirements to the business associates of covered entities;
- Establishing new limitations on the use and disclosure of protected health information for marketing and fundraising purposes;
- Prohibiting the sale of protected health information without a valid authorization unless an exception applies;
- Expanding individuals’ rights to access their information and to obtain restrictions on certain disclosures of protected health information to health plans; and
- Adopting provisions designed to strengthen and expand HIPAA’s enforcement provisions.

CONTINUED IN ATTACHED PDF

