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HEALTH CARE LAW
FOULSTON SIEFKIN ISSUE ALERT

ONC FOCUSES ON HIPAA SECURITY WITH RELEASE OF SECURITY RISK ASSESSMENT TOOL

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by Brooke Bennett Aziere

Health care providers received a gift from the U.S. Department of Health and Human Services (HHS), Office of the National Coordinator for Health Information Technology (ONC) last week. On March 28, 2014, ONC, the HHS agency driving federal efforts on health information technology, released a new Security Risk Assessment (SRA) Tool to assist health care providers with completion of the risk assessment required under the HIPAA Security Rule. Although HHS indicated that the SRA Tool is designed to assist small-to medium-sized providers, the SRA Tool also contains guidance that assists larger providers and business associates with completion of the required assessment.

SRA TOOL

The SRA Tool consists of three parts: technical safeguards, physical safeguards, and administrative safeguards. In each part, the SRA Tool takes the provider through each standard and implementation specification as outlined in the Security Rule by asking a series of questions. The SRA Tool also provides helpful information for providers to consider in answering the questions as well as examples of possible threats, vulnerabilities, and safeguards. The SRA Tool allows space for a detailed description of the provider's current activities and remediation plan to address any identified threats or vulnerabilities. The SRA Tool is available in Windows and iOS iPad formats. Providers can download the Windows version at www.HealthIT.gov/security-risk-assessment. The iOS iPad version is available via the Apple App Store at https://itunes.apple.com/us/app/hhs-sra-tool/id820478630?ls=1&mt=8.

The ONC has posted a Tutorial Video and User Guide to assist providers with navigating the SRA Tool. Upon completion of the SRA Tool, a report can be generated and downloaded for purposes of documenting the provider's Security Rule compliance. This documentation will be important for responding to upcoming audits and addressing Office for Civil Rights (OCR) complaint investigations.

HIPAA AUDITS

HHS released the new SRA Tool on the heels of OCR's February announcement that HIPAA audits will resume later this year. OCR's first step involves a survey of 1,200 entities-800 covered entities and 400 business associates-to obtain information about the entities, enabling OCR to assess the size, complexity, and fitness of a covered entity or business associate for an audit. OCR will be seeking information related to the number of patient visits for health care providers; number of insureds for group health plans; use of electronic information; revenue; and geographic location. OCR has indicated that not all entities that are surveyed will be audited.

OCR also stated that the audit protocols utilized in the pilot program will be modified to be narrower in scope, which will enable OCR to include more entities in the audits. Providers should expect compliance with the Security Rule risk assessment requirement to be a primary focus of the upcoming audits. The pilot program audits uncovered widespread failure of covered entities related to completion of a risk assessment. Two-thirds of the covered entities (providers, group

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health plans, and health care clearinghouses) failed to produce a complete and accurate risk assessment. Of that number, nearly eighty percent of providers did not satisfy the risk assessment requirement. Providers should seize this opportunity to complete a risk assessment before they receive an audit notification letter.

EHR MEANINGFUL USE

Completion of a security risk assessment is also a requirement for providers seeking payment through the Medicare and Medicaid EHR Incentive Program (Meaningful Use Program). CMS and its contractor, Figliozzi and Company, are actively auditing providers to detect inaccuracies in eligibility, reporting, and payment. Providers should make sure they have completed a risk assessment for the applicable year before they submit an attestation for Meaningful Use.

FOR FURTHER INFORMATION

Foulston Siefkin's health care lawyers maintain a high level of expertise regarding federal and state regulations affecting the health care industry. The firm devotes significant resources to ensure our attorneys remain up-to-date on daily developments. At the same time, the relationship of our health care law practice group with Foulston Siefkin's other practice groups, including the taxation, general business, labor and employment, and commercial litigation groups, enhances our ability to consider all of the legal ramifications of any situation or strategy. For additional information regarding the new Security Risk Assessment (SRA) Tool, contact **Brooke Bennett Aziere** at 316.291.9768 or **baziere@foulston.com**. If you are looking for general health care counsel, you may contact **Scott Palecki** at 316.291.9578 or **spalecki@foulston.com**. For more information on the firm, please visit our website at **www.foulston.com**.