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BCBST Agrees To Pay \$1.5 Million In 1st OCR Enforcement Action Prompted By HITECH Act Breach Report

Resolution Agreement Also 1st Announced With Health Plan

Health plans and other covered entities beware and prepare! Health plans and other covered entities that report large breaches of unsecured protected health information to the Department of Health & Human Services (HHS) Office of Civil Rights and face potential civil monetary penalties (CMPs) for violating the Privacy & Security Rules of the Health Insurance Portability & Accountability Act of 1996 (HIPAA).

The HIPAA investigation and exposures to CMPs likely to result following the report of a large breach of unsecured protected health information is demonstrated by a new Resolution Agreement announced March 13, 2012 by OCR.

Blue Cross Blue Shield of Tennessee (BCBST) has agreed to pay OCR \$1,500,000 and to take certain other actions specified in a corrective action plan to settle potential violations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules. The [BCBST Resolution Agreement](#) is particularly significant, both as:

- The first reported enforcement action directly resulting from the filing by a covered entity of a breach report required by the Health Information Technology for Economic and Clinical Health (HITECH) Act Breach Notification Rule; and
- The first reported resolution agreement reached with a covered entity that is a health plan.

These notable enforcement firsts demonstrate both the significance of the HITECH Breach Notification Rule's significance as an OCR HIPAA enforcement tool, and the readiness of OCR to sanction health plans that breach HIPAA's Privacy or Security Rules.

The OCR investigation that lead to the BCBST settlement began in response to the submission by BCBST of a notice required under the Breach Notification Rule of the theft of 57 unencrypted computer hard drives from a leased facility in Tennessee, which contained the protected health information (PHI) of over 1 million individuals. Read more details [here](#).

The Breach Notification Rule requires covered entities to report an impermissible use or disclosure of protected health information, or a “breach,” of 500 individuals or more to HHS and the media as well as an annual consolidated report of smaller breaches to HHS.*

To resolve being officially sanctioned for HIPAA violations stemming from these findings under the strengthened enforcement rules and sanctions enacted as part of the HITECH Act, BCBST has agreed to pay \$1,500,000 and adopt other corrective actions detailed in a corrective action plan.

Enforcement Actions Highlight Growing HIPAA Exposures For Covered Entities

The BCBST Resolution Agreements, like the 1st-ever \$4.3 million HIPAA CMP that OCR imposed against Cignet Health of Prince George’s County, Md. (Cignet) in 2011 and a series of high dollar Resolution Agreements OCR has announced against various health care providers over the past few years highlight the significance of the HITECH Act amendments to HIPAA’s enforcement and CMP rules, as well as the significance of its Breach Notification Rule as a tool in OCR’s investigation and enforcement efforts.

“This settlement sends an important message that OCR expects health plans and health care providers to have in place a carefully designed, delivered, and monitored HIPAA compliance program,” said OCR Director Leon Rodriguez. “The HITECH Breach Notification Rule is an important enforcement tool and OCR will continue to vigorously protect patients’ right to private and secure health information.”

BCBST’s breach notification report clearly prompted the investigation that lead to the Resolution Agreement. The opening of the investigation in response to the BCBST Breach Notification report reflects the need for covered entities to be prepared to respond to an investigation when these reports are made. OCR officials previously have stated that it is the practice of OCR to conduct an investigation into all breaches of the protected health information of 500 individuals or more reported to it under the Breach Notification Rule.

The BCBST Resolution Agreement provides yet another reminder to covered entities and their business associates of the need to carefully and appropriately manage their HIPAA responsibilities. See [HIPAA Heats Up: HITECH Act Changes Take Effect & OCR Begins Posting Names, Other Details Of Unsecured PHI Breach Reports On Website](#). Covered entities are urged to heed these warning by strengthening their HIPAA compliance and adopting other suitable safeguards to minimize HIPAA exposures. For more tips, see [here](#).

For Help With Monitoring Developments, Compliance, Investigations Or Other Needs

If you need assistance monitoring federal health reform, policy or enforcement developments, or to review or respond to these or other health care or health IT related risk management, compliance, enforcement or management concerns, the author of this update, attorney Cynthia Marcotte Stamer, can help. Vice President of the North Texas Health Care Compliance Professionals Association, Past Chair of the ABA Health Law Section Managed Care & Insurance Section and the former Board Compliance Chair of the National Kidney Foundation of North Texas, Ms. Stamer has more than 24 years experience advising health industry clients about these and other matters. Ms. Stamer has extensive experience advising and assisting health care providers, health plans, their business associates and other health industry clients to

* The Breach Notification Rule also requires that covered entities report smaller breaches annually to OCR as part of a consolidated disclosure.

establish and administer medical privacy and other compliance and risk management policies, to health care industry investigation, enforcement and other compliance, public policy, regulatory, staffing, and other operations and risk management concerns. She regularly designs and presents HIPAA and other risk management, compliance and other training for health plans, employers, health care providers, professional associations and others.

Ms. Stamer also regularly works with OCR and other agencies, publishes and speaks extensively on medical and other privacy and data security, health and managed care industry regulatory, staffing and human resources, compensation and benefits, technology, public policy, reimbursement and other operations and risk management concerns. Her publications and insights appear in the Health Care Compliance Association, Atlantic Information Service, Bureau of National Affairs, World At Work, The Wall Street Journal, Business Insurance, the Dallas Morning News, Modern Health Care, Managed Healthcare, Health Leaders, and a many other national and local publications. For instance, Ms. Stamer for the second year will serve as the appointed scribe for the ABA Joint Committee on Employee Benefits Agency meeting with OCR. Her insights on HIPAA risk management and compliance frequently appear in medical privacy related publications of a broad range of health care, health plan and other industry publications. Among others, she has conducted privacy training for the Association of State & Territorial Health Plans (ASTHO), the Los Angeles Health Department, the American Bar Association, the Health Care Compliance Association, a multitude of health industry, health plan, insurance and financial services, education, employer employee benefit and other clients, trade and professional associations and others.

You can get more information about her HIPAA and other experience [here](#).

If you need assistance with these or other compliance concerns, wish to inquire about arranging for compliance audit or training, or need legal representation on other matters please contact Ms. Stamer at (469) 767-8872 or via e-mail [here](#).

If you need help investigating or responding to a known or suspected compliance, litigation or enforcement or other risk management concern, assistance with reviewing, updating, administering or defending a current or proposed employment, employee benefit, compensation or other management practice, wish to inquire about federal or state regulatory compliance audits, risk management or training, or need legal representation on other matters please contact Ms Stamer [here](#) or at (469) 767-8872.

Other Recent Updates & Resources

If you found this information of interest, you also may be interested in the following recent updates on health care, health plan and employee benefits, human resources and other risk management and compliance matters.

Recent updates on health plan, human resources and employee benefit matters include:

- [March 21 New Deadline To Comment On Proposal To Extend Minimum Wage, Overtime Rules To In Home Care Workers](#)
- [NLRB Report Shows Rise In Unfair Labor Practice Complaints & Formal Proceedings](#)
- [Sullivan University System to Pay \\$483,000 in Back Wages Overtime Violations Stemming From Worker Misclassifications](#)
- [New DOL Final Rules Tighten Requirements For Employers To Hire Alien Workers Using H-2B Visas](#)
- [OSHA \\$1Million Award Against AirTran Airways Highlights Retaliation Risks](#)

- [HHS Chides Trustmark Life Insurance Company For “Excessive” Health Premium Increases After Affordable Care Act Rate Audit](#)
- [Labor Department Final Rule Defines Recreation Vehicle For Longshore & Harbor Workers’ Compensation Act](#)
- [Portion of Health Care Costs Paid By Government Programs Rose As Employer Provided & Other Private Health Care Coverage Declined In 2010](#)[Manufacturer’s Excessive I-9 Documentation Triggers Discrimination Liability](#)
- [Stamer Dallas Bar Journal Article Cautions Employers Must Take Holistic Approach To Address Worker Misclassification Risks](#)
- [Employers Urged To Strengthen Worker Classification Defenses As Obama Administration Targets Employers Misclassifying Workers](#)

Recent examples on health care compliance and risk management matters include:

- [Comment Period Extended To 3/21 On Proposed Extension Of Minimum Wage, Overtime To In-Home Caregivers](#)
- [2 Doctors, 4 Nurses Join 11 Defendants Charged in \\$20M Home Health Fraud, Kickback, Money Laundering & Tax Evasion Sting](#)
- [States Medicaid & Other Health Care Fraud Enforcement Successes Continue](#)
- [Data Mining, Statistical Profiling Play Key Role In Arrest of Dallas Doctor, Office Manager & 5 Home Health Agency Owners](#)
- [ONC Releases Proposed Rules For Meaningful Use Stage 2](#)
- [DOJ & HHS Health Care Fraud Enforcement Nets \\$4 Billion + In 2011](#)
- [Update Charity and Sliding Fee Scale Policies For 2012 Federal Poverty Rate Changes](#)
- [Texas Physicians Get New Option For Resolving Some Medical Board Complaint](#)
- [Broad-Reaching Prosecution Of Individuals Participating In Operations Of Companies Convicted Of Fraud Shows Risks Of Participation](#)
- [Hospitals Can Expect CMS To Add Hospital Incident Reporting To Surveys In Response To OIG Report](#)
- [North Texas Medical Supply Company Owner Indicted For Health Care Fraud Now Also Charged With Immigration Fraud](#)
- [DOL Proposes Tighter Overtime, Minimum Wage Rules For Home Care Workers, Continues Scrutiny Of Health Care Employers](#)
- [DFW Hospital Council Foundation Among 26 Organizations Selected To Lead Quality Effort](#)
- [Former Houston Texas Physician Gets 70 Month Prison Sentence For Fraud Conviction](#)
- [Eules Healthcare Corporation Owner, Associates Face Conspiracy And Health Care Fraud Charges For Alleged Submission Of \\$700,000+ In Fraudulent Health Care Claims](#)

For additional resources and publications training materials by Ms. Stamer, see [here](#).

If you or someone else you know would like to receive future updates about developments on these and other concerns, please be sure that we have your current contact information – including your preferred e-mail – by creating or updating your profile [here](#). For important

information concerning this communication click [here](#). If you do not wish to receive these updates in the future, send an e-mail with the word “Remove” in the Subject to [here](#).

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