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How to Prepare for a HIPAA Audit

Privacy Check ✓

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April 17, 2012

Historical Perspective

- Health Insurance Portability and Accountability Act of 1996 (HIPAA)
- April 2003: Privacy Rule is effective
  - Sets standards to limit how Protected Health Information (PHI) is used and disclosed, and to provide individuals with certain rights related to their PHI
- April 2005: Security Rule is effective
  - Defines administrative, physical, and technical safeguards necessary to protect confidentiality, integrity, and availability of electronic PHI (ePHI)

Historical Perspective

- American Recovery and Reinvestment Act of 2009
  - Includes the Health Information Technology for Economic and Clinical Health Act (HITECH)
- February 2010: HITECH becomes effective
  - Amends Privacy Rule and Security Rule; adds Notification of Breach provisions; strengthens enforcement and increases penalties for violations
- Spring/summer 2012: Omnibus Regulations

Penalties

- Significant civil and criminal penalties may be imposed
  - Civil penalties: As high as $1.5 million for multiple violations of the same requirement in a calendar year
  - Criminal penalties: As high as $250,000 and 10 years of imprisonment
  - Enforcement:
    - *Civil enforcement by HHS/OCR*
    - *Criminal actions prosecuted by DOJ*
    - *State Attorneys General*

Current Enforcement Activity

- Periodic audits
  - Pilot program to audit 150 covered entities by end of 2012
    - *Notice and document request*
    - *On-site visit*
    - *Report*
    - *Follow-up investigation if serious compliance issues revealed*
- Investigation of breach reports
  - HHS will follow up on significant breaches

Assess Your Compliance

- Regularly perform a “Self-Audit”
  - Recommendation: Every 2 years
  - Track the flow of PHI through the entire organization
  - Involve all key people
  - Use an audit questionnaire or a similar tool as a guide

Assess Your Compliance

- Review all documentation for consistency with practices and legal accuracy
  - *Policies and Procedures*
  - *Notice of Privacy Practices*
  - *Authorization*
  - *Plan Sponsor Certification/Plan Language*
  - *Business Associate Agreements*

Train Your Workforce

- Training, training, training
  - Recommendation:
    - *Within 60 days of hire*
    - *Refresher every 2 years*
  - Focus on legal requirements and practical application to job duties
    - *Use examples*
    - *Conduct quizzes*
  - Track and log participation

Danger Zones

- Individual rights
  - Procedure in place
  - Coordinate with Business Associates
  - Timely respond
- Complaints
  - Take all complaints seriously
  - Investigate thoroughly with the involvement of counsel
  - Respond adequately and timely

Danger Zones

- Breaches
  - Have notification procedure in place
    - *Business Associates*
  - Identify team to investigate
    - *Include Privacy Officer and counsel*
  - Properly document investigation and findings
  - Take action
    - *Mitigate harm*
    - *Prevent future breaches*

Examples of Violations

- Recent enforcement actions
  - Cignet Health of Maryland
    - *First time OCR imposed a civil money penalty under HIPAA*
    - *$4.3 million civil penalty*
      - $100 per day for failure to respond to patient requests
      - $1.5 million per year for failure to cooperate with OCR
  - Massachusetts General Hospital
    - *$1 million settlement*
    - *Corrective action includes new policies and procedures regarding transporting PHI; training*

Examples of Violations

- UCLA
  - *$865,500 settlement*
  - *Corrective action includes independent monitor*
- BlueCross BlueShield of Tennessee
  - *$1.5 million settlement*
  - *First reported settlement with health plan*
  - *Corrective action includes training new hires within 40 days*

- Other examples

Ways to Avoid Violations

- Do NOT delay in notifying Privacy Officer of *suspected* breach
- Have detailed policies and procedures – especially for breach-prone areas
  - Removal of hard copy PHI
  - Laptop use
  - Smartphones
  - Storage
- Train employees at all levels

Your Action Plan

- Regularly self-audit
  - Track PHI and ePHI and review documentation
  - Train workforce
  - Provide Privacy Officer with necessary resources and support to respond timely to:
    - *Requests for individual rights*
    - *Complaints*
    - *Breach investigations*
    - *HHS inquiries/audits*

Questions?

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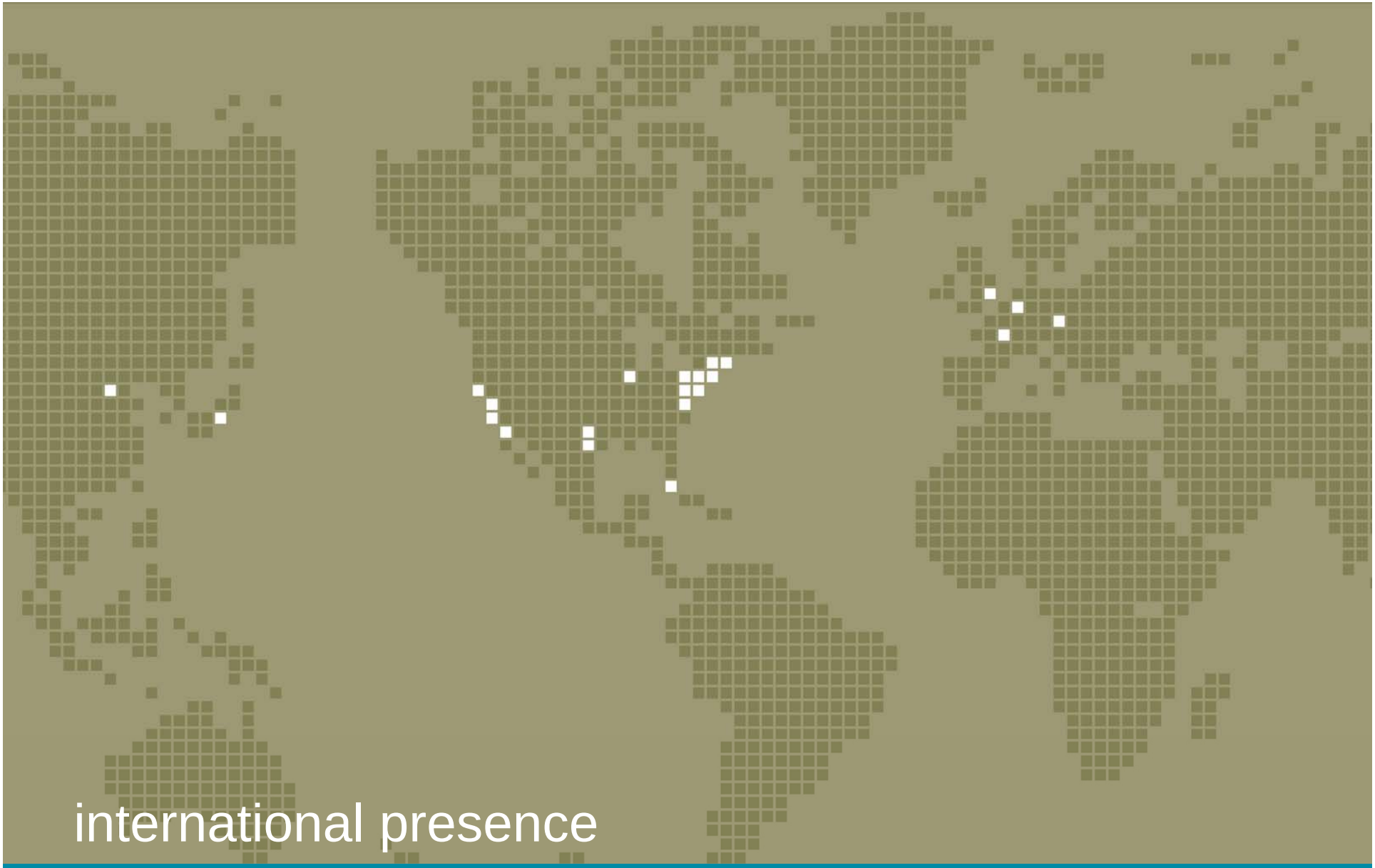

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