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HIPAA Privacy Compliance Initiative: Final Rules Impact Employer Health Plans

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Date: February 8, 2013
Time: 12:30-1:30 p.m. ET

Agenda

- History of HIPAA & HITECH
- Omnibus Regulations
  - Business Associates
  - Breach Notification
  - Notice of Privacy Practices
  - Enforcement
  - Other Changes
- Next Steps
- Questions?

History of HIPAA & HITECH Act

- Health Insurance Portability & Accountability Act of 1996 (HIPAA)
  - Privacy (effective 2003) & Security (effective 2005)
- Health Information Technology for Economic and Clinical Health (HITECH) Act – Effective February 2010
- Omnibus Regulations
  - Effective date: March 26, 2013
  - Compliance date: September 23, 2013 (w/ exception)
  - "Marks the most sweeping changes to the HIPAA Privacy & Security Rules since they were first implemented."

Omnibus Regulations

- Business Associates (BA)
  - Extends direct liability to BAs for Security & certain Privacy compliance
  - Expands definition of BA
    - *e.g., Subcontractor of BA*
    - *Additional guidance planned*
  - Affirms liability for acts of "agents"
  - Modifies content of BA Agreements (BAAs)
    - *Comply by September 23, 2013, or September 23, 2014 if …*
  - No additional time for BAs to comply

Omnibus Regulations

- Breach Notification
  - Eliminates subjective "significant risk of harm" threshold
  - Presumes breach requiring notification
    - *Unless CE/BA demonstrates "low probability that PHI [protected health information] has been compromised"*
    - *Consider at least 4 factors*
    - *Objective standard*
  - Likely to increase breach reporting
  - Additional guidance planned
  - Note: Methodology for counting violations remains unclear

Omnibus Regulations

- Other Changes
  - Genetic Information
    - *Prohibits plans from using or disclosing genetic info for underwriting purposes*
  - Marketing & Sale of PHI
    - *Only permitted with authorization*
  - Individual Rights
    - *Restrict disclosure to plan when paying out of pocket*
    - *Access to PHI in the form and format requested*

Omnibus Regulations

- Notice of Privacy Practices (NPP)
  - Revise for:
    - *Certain uses & disclosures requiring authorization*
    - *Fundraising*
    - *Breach Notice*
    - *GINA*
  - Redistribution
    - *Post by September 23, 2013 & provide in next annual mailing*

Omnibus Regulations

- Enforcement
  - Retains 4 tiers of penalties
    - *Did not know – $100 - $50,000*
    - *Due to reasonable cause – $1,000 - $50,000*
    - *Due to willful neglect & timely corrected – $10,000- $50,000*
    - *Due to willful neglect & not timely corrected – $50,000 - $1.5M*
  - Secretary of Labor required to investigate complaint or to conduct compliance review where willful neglect probable
  - Factors used in determining amount of civil money penalty

Next Steps

- Perform Gap Analysis/Self-Audit Now
- Revise Policies & Procedures
- Revise & Post/Distribute Notice of Privacy Practices
- Revise Business Associates/Subcontractor Agreements
  - Consider approach
- Train Privacy Employees
- Consider Encryption

How We Can Help?

- Morgan Lewis Benefits Solutions
  - HIPAA Privacy Initiative
    - *Self-Audit Assistance*
      - Includes detailed audit questionnaire
      - Identification of potential violations
    - *Training*
      - May be recorded for future use
    - *Privacy Officer Assistance*

Polling Question

- If you are interested in learning more about our HIPAA compliance services, please answer the polling question on the right-hand side of your screen and we will give you a call.

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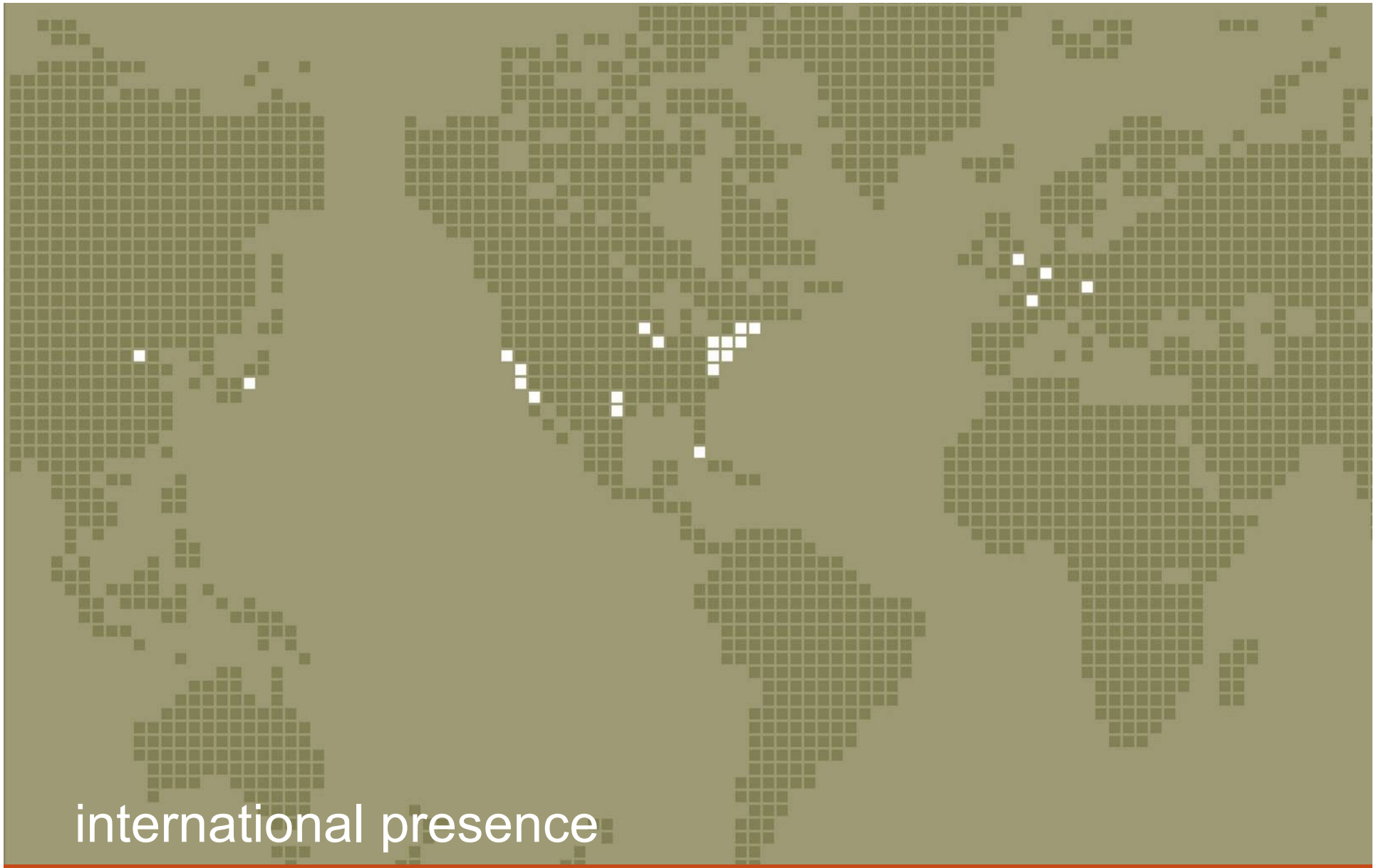

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