



## ComplianceConnection

July 28th, 2014



### Annual Report to Congress on Breaches of Unsecured Protected Health Information

#### Introduction

Section 13402 of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as part of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), requires covered entities and business associates under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) to provide notification of breaches of unsecured protected health information (PHI).

### Nation's Largest Nursing Home Pharmacy Company to Pay \$124 Million to Settle Allegations Involving False Billings to Federal Health Care Programs

Omnicare Inc., the nation's largest provider of pharmaceuticals and pharmacy services to nursing homes, has agreed to pay \$124.24 million for allegedly offering improper financial incentives to skilled nursing facilities in return for their continued selection of Omnicare to supply drugs to elderly Medicare and Medicaid beneficiaries, the Justice Department announced today. Omnicare is headquartered in Cincinnati, Ohio.

"Health care providers who seek to profit from providing illegal financial benefits will be held accountable," said Assistant Attorney General for the Justice Department's Civil Division Stuart F. Delery. "Schemes such as this one undermine the health care system and take advantage of elderly nursing home residents."

"Omnicare provided improper discounts in return for the opportunity to provide medication to Medicare and Medicaid beneficiaries," said Steven M. Dettelbach, United States Attorney for the Northern

Section 13402(i) of the HITECH Act requires the Secretary of Health and Human Services ("the Secretary") to prepare and submit to the Senate Committee on Finance, the Senate Committee on Health, Education, Labor, and Pensions, the House Committee on Ways and Means, and the House Committee on Energy and Commerce, an annual report containing the number and nature of breaches reported to the Secretary, and the actions taken in response to those breaches. The following report provides the required information for the breaches reported to the Secretary that occurred in calendar years 2011 and 2012.

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## Small Business Health Options Program (SHOP)

On May 27, 2014, the Department of Health and Human Services (HHS) published a final rule taking the next step in implementing "employee choice" in the Small Business Health Options Program (SHOP). "Employee choice" provides employers the opportunity to allow employees to choose any health plan at the actuarial value, or "metal," level selected by the employer.

Small business markets differ from state-to-state. To smooth the transition to employee choice, HHS provided states with additional flexibility by allowing State Insurance

District of Ohio. "Nursing homes should select their pharmacy provider based on the best quality, service and cost to the residents, not based on improper discounts to the nursing facility."

The settlement resolves allegations that Omnicare submitted false claims by entering into below-cost contracts to supply prescription medication and other pharmaceutical drugs to skilled nursing facilities and their resident patients to induce the facilities to select Omnicare as their pharmacy provider. The facilities were participating providers under agreements with Medicare and Medicaid. In addition to the facilities' own claims for reimbursement from Medicare for short-term rehabilitation treatment rendered to patients, Omnicare submitted additional claims for reimbursement to Medicare and Medicaid for drugs Omnicare supplied. Of the \$124.24 million to be paid by Omnicare, \$8.24 million will go to various states which jointly funded the Medicaid programs impacted by Omnicare's conduct.

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## Annual Report to Congress on HIPAA Privacy, Security and Breach Notification Rule Compliance

### Introduction

Section 13424(a) of the Health Information Technology for Economic and Clinical Health (HITECH) Act, enacted as title XIII of division A and title IV of division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), requires the Secretary of the Department of Health and Human Services (the Department) to prepare and submit an annual report to the Senate Committee on Health, Education, Labor, and Pensions, and to the House Committee on Ways and Means and the House Committee on Energy and Commerce (the Committees), regarding compliance with the Privacy and Security Rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191), as well as the privacy and security provisions of the HITECH Act. Thus,

Commissioners to request that the SHOP in their state not implement employee choice in 2015.

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for the years for which the report is prepared, the report summarizes the Department's compliance and enforcement activities with respect to the HIPAA Privacy, Security, and Breach Notification Rules at 45 CFR Parts 160 and 164. Section 13424(a)(2) of the HITECH Act requires that each report be made available to the public on the website of the Department. This report is available at <http://www.hhs.gov/ocr/privacy>.

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As a continued service to you, we will distribute the Compliance Connection on a bi-weekly basis. As pertinent compliance issues arise we may distribute information off-cycle. Thank you!

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