

## How to Handle a DOJ Investigation into HIPAA Violations

HIPAA violations often begin as regulatory inquiries with the Department of Health and Human Services (HHS) Office for Civil Rights (OCR). However, when evidence suggests false statements, fraud, or willful misconduct, these matters escalate into **high-stakes government investigations** led by the Department of Justice (DOJ).

At this stage, an administrative compliance issue transforms into a **federal criminal defense** matter. Organizations may face grand jury subpoenas, massive civil monetary penalties, or even a **federal indictment**.

### HOW HIPAA MATTERS REACH THE DOJ

Healthcare entities and executives must understand that **regulatory enforcement** is often the precursor to a **criminal investigation**. The DOJ typically enters the frame through:

- **Referrals from OCR:** OCR refers cases to the DOJ when they find evidence of intentional wrongdoing or willful disclosure for personal or commercial gain.
- **Whistleblower Actions:** Under the False Claims Act (FCA), whistleblowers can trigger **multijurisdictional enforcement** actions by alleging that an entity's HIPAA failures constitute a "false certification" to the government.
- **Civil Cyber-Fraud Initiative:** The DOJ now utilizes the FCA to target cybersecurity-related fraud, viewing misrepresentations about data security protocols as a basis for **high-stakes** litigation.

### DOJ ENFORCEMENT: CIVIL VS. CRIMINAL EXPOSURE

If the government alleges knowing or willful HIPAA violations, the matter becomes a **criminal investigation**. These cases often focus on:

#### 1. Civil Enforcement and the False Claims Act

The DOJ may pursue treble damages and massive penalties under federal fraud statutes. The DOJ is aggressively using its **Civil Cyber-Fraud Initiative** to hold healthcare providers accountable for truthfulness in their cybersecurity certifications—even in cases where no actual data breach has occurred.

#### 2. Federal Criminal Prosecution

If the government alleges knowing or willful HIPAA violations, the matter becomes a criminal investigation. These cases often focus on:

- **Wrongful Disclosure:** Obtaining or disclosing protected health information (PHI) for profit or malicious harm.
- **Conspiracy and Fraud:** Using PHI to facilitate broader healthcare fraud schemes.
- **Obstruction:** Making false statements during a **government investigation**.

## WHEN TO TAKE ACTION

Timing is the most critical factor in mitigating **reputational risk** and legal exposure. You should contact a **white collar crime lawyer** immediately if:

- **You receive a Grand Jury Subpoena or Target Letter:** These are clear signals that you or your organization are the focus of a **federal criminal investigation**.
- **You discover a significant internal data breach:** Proactive management is essential to prevent a regulatory matter from escalating into a **criminal investigation**.
- **Federal agents arrive for an interview:** Never speak with investigators before consulting with a **criminal defense attorney**.
- **A whistleblower report is filed:** Early intervention allows counsel to shape the investigation and potentially prevent charges from being filed.

## HOW TO TAKE ACTION

When facing **high-stakes** federal authorities, you need a defense team that understands the government's playbook.

- **Retain Former Federal Prosecutors:** Dykema's **White Collar Defense and Government Investigations** team includes former high-level federal and state prosecutors with over 100 years of collective experience, including more than 200 trials and 400 appeals. We have led these investigations from the inside; we know how the government makes charging decisions.
- **Launch a Privileged Internal Investigation:** We conduct thorough **internal corporate investigations** to identify risks, preserve privilege, and determine appropriate corrective actions before the government intervenes.
- **Review and Reinforce Corporate Compliance:** We help you ensure your **compliance programs** are not just "paper programs" but are documented, tested, and updated to reflect current DOJ standards.
- **Secure Nationwide Representation:** Whether your matter is local or **multijurisdictional**, our team provides **nationwide** defense to resolve investigations quietly and win trials decisively.

**Contact Dykema's White Collar Defense and Government Investigations practice today for a confidential consultation.**



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