United States Department of Health & Human Services

Office of the Secretary
Office for Civil Rights (OCR)

Federal Update on HIPAA/HITECH Privacy

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19th HIPAA Summit
March 9, 2011

OVERVIEW

- Status of Current Activities
  - Other HITECH Rules and Guidance
  - Status of Breach Notifications
  - Status of Enforcement and Compliance

- HITECH Privacy & Security Rule NPRM
  - Breach Notification and Enforcement IFR
  - Genetic Information Non-discrimination Act

Recent OCR HITECH Activities

- Guidance on Unsecured PHI (April 2009)
- Breach Notification Interim Final Rule and Updated Guidance on Unsecured PHI (Aug. 2009)
- HITECH Enforcement Interim Final Rule (Oct. 2009)

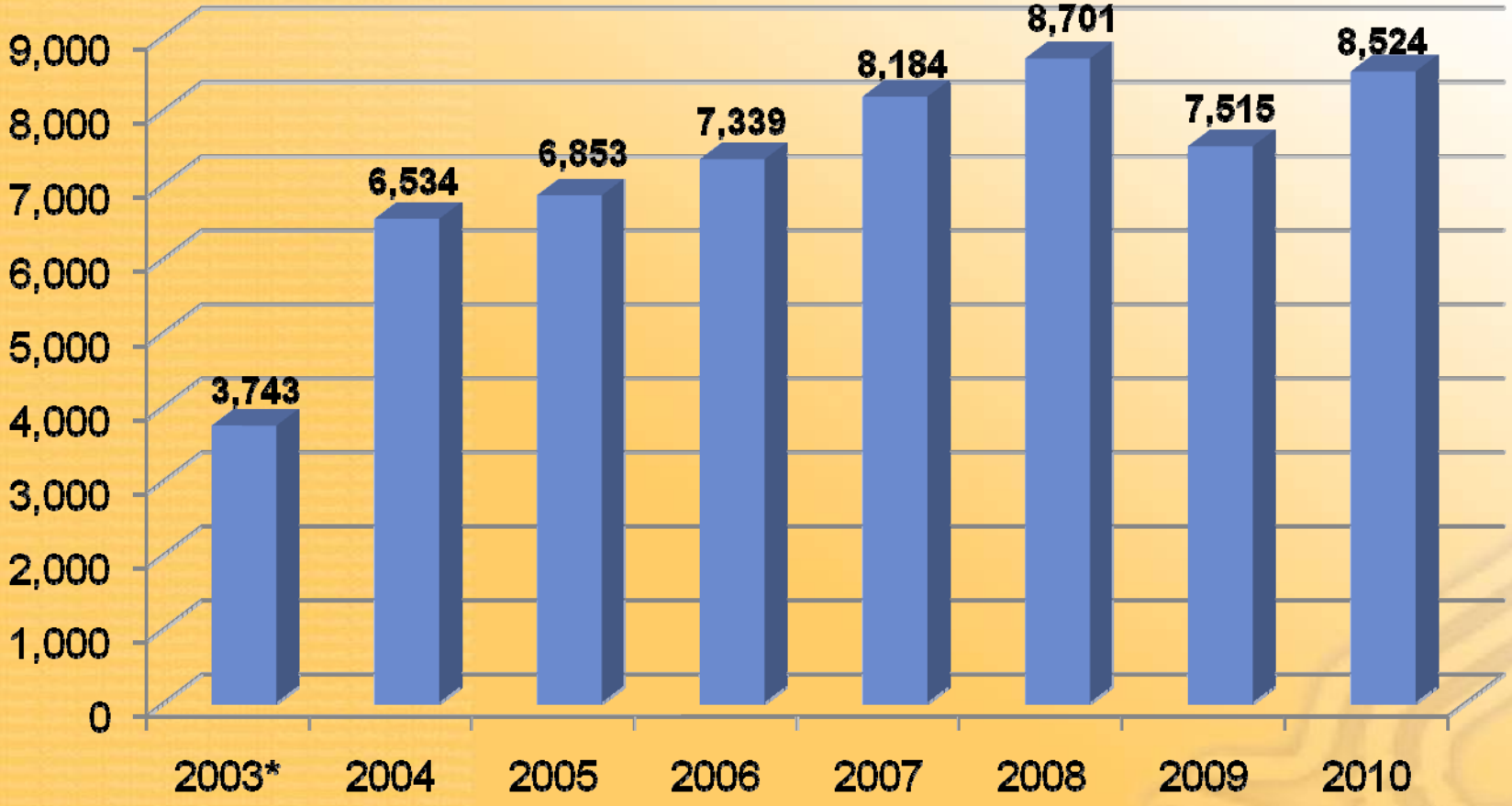
- Workshop on De-identification (March 2010)
- Accounting for Disclosures RFI (May 2010)
- Security Rule Risk Analysis Guidance (July 2010)

- HITECH Proposed Rule (July 2010)

Breach Notification Statistics
(as of February 28, 2011)

- 241 reports involving over 500 individuals posted
- Over 29,000 reports involving under 500 individuals
- Top causes of large breaches
  - Theft
  - Unauthorized Access
  - Loss
- Top media types for large breaches
  - Laptops
  - Paper records
  - Desktop Computers
  - Portable electronic devices

Privacy Complaints Per Year



* Partial year

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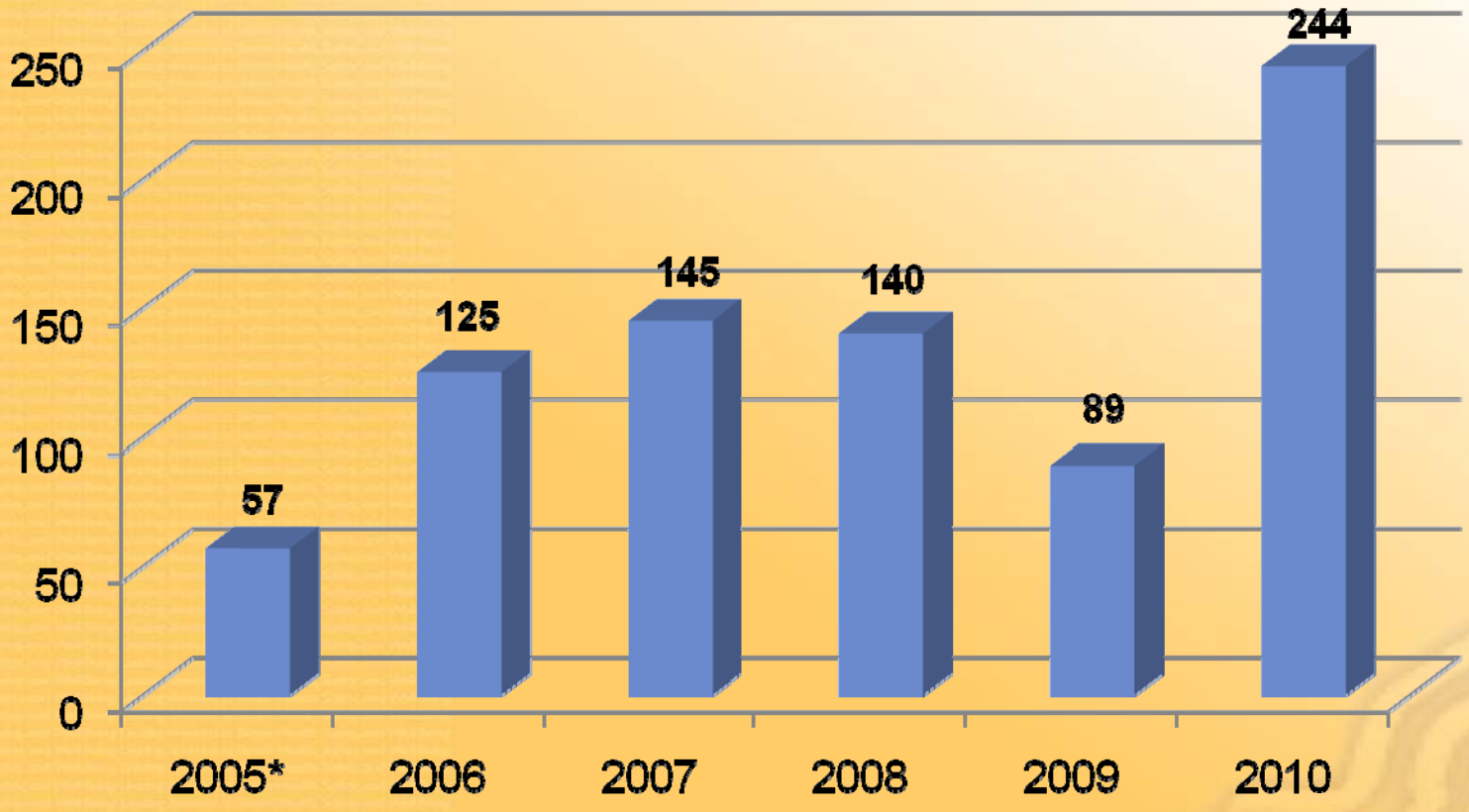
Security Complaints Per Year



* Partial year

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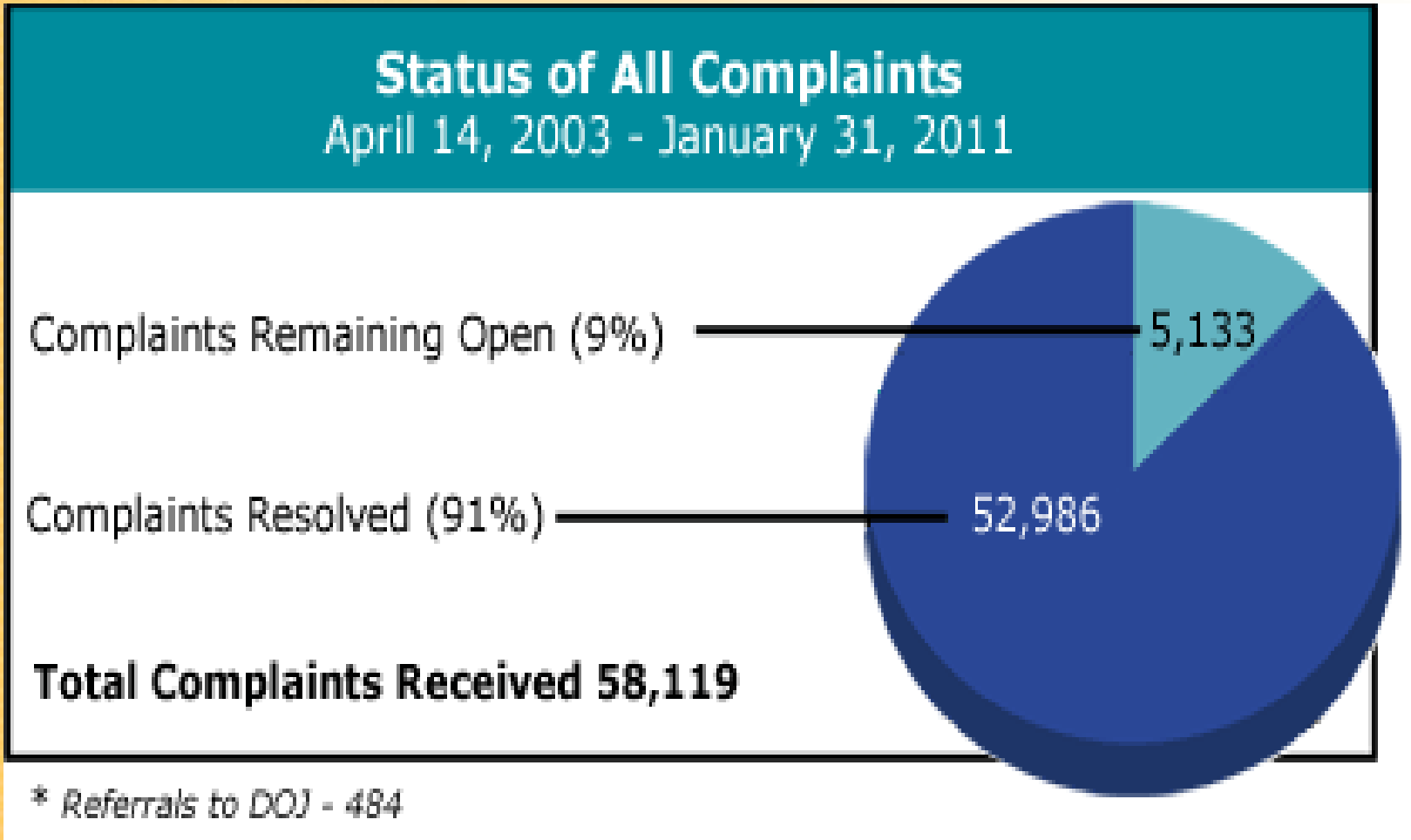
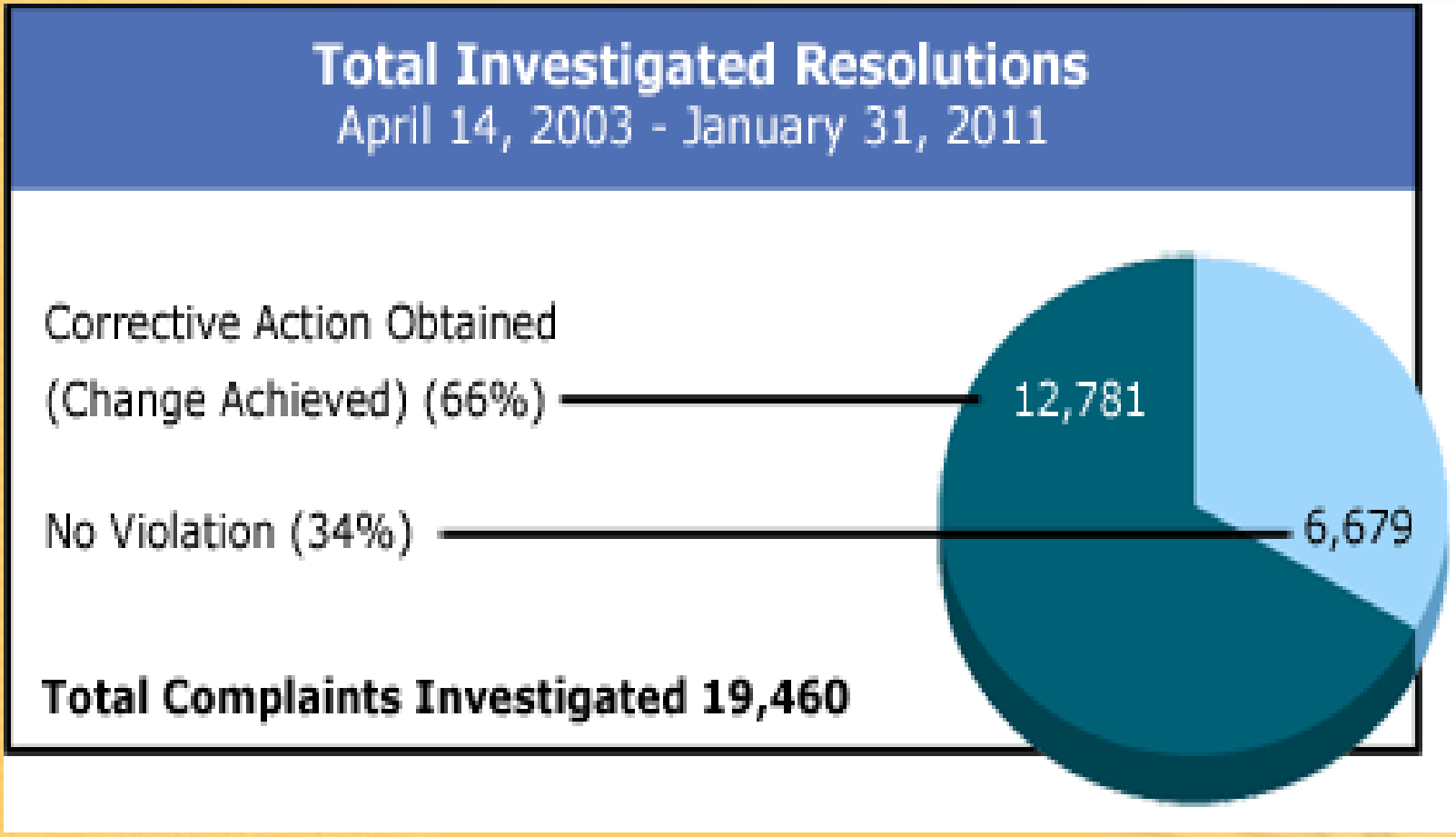
All Privacy Complaints



Total Privacy Investigated Resolutions



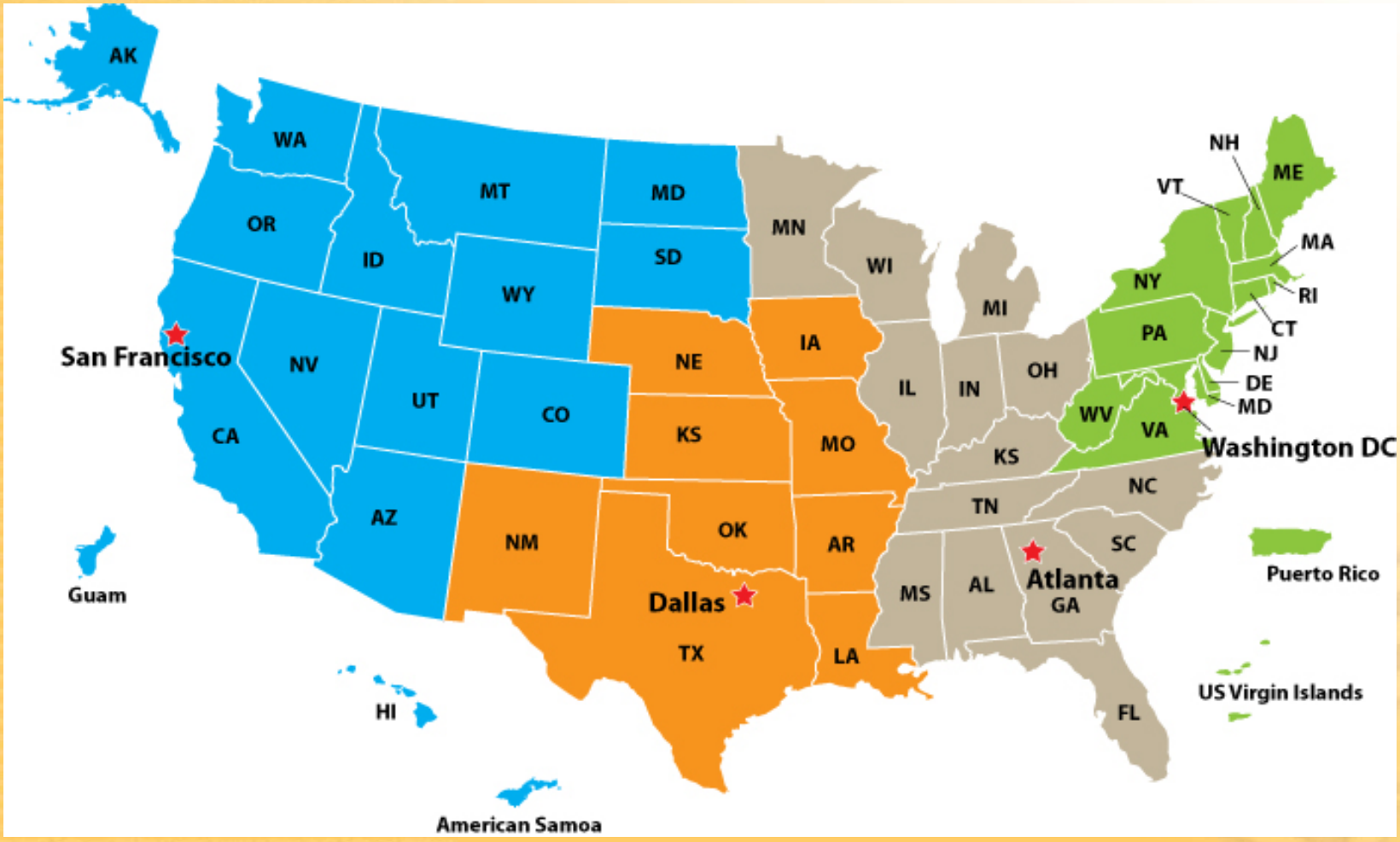
Enforcement Actions

- Cignet Health/Maryland (February 2011)
  - Civil Money Penalty of $4.3 Million
  - Failure to provide access; failure to cooperate
- Massachusetts General Hospital (February 2011)
  - Loss of PHI by manager in infectious disease department; lack of safeguards in taking phi off premises
  - 3-year corrective action plan & $1 million resolution amount
- Management Services Organization /Washington (December 2010)
  - Improper disclosure of e-PHI for marketing purposes
  - 3-year corrective action plan & $35,000 resolution amount
  - Part of agreement with OIG and DOJ (false claims issues)

State Attorneys General Training

- Invitations to 50 State Attorneys General and District, Territories
- 4 In-Person Training sites:
  - Dallas April 4 & 5
  - Atlanta May 9 & 10
  - Washington DC May 19 & 20
  - San Francisco June 13 & 14
- Computer based training will follow

State Attorneys General Training Sites



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HITECH/HIPAA Proposed Rule

- Published July 14, 2010 (75 Fed. Reg. 40,868)
- Over 300 comments received by September 13, 2010
- Final Rule targeted for 2011
  - Final HITECH content in the NPRM
  - Final Enforcement and Breach Notification IFR
  - Final other HIPAA content in NPRM
  - Final GINA NPRM

HITECH/HIPAA Proposed Rule

- **HITECH Content:**
  - Business associates
  - Enforcement
  - Electronic access
  - Marketing ,
  - Fundraising,
  - No sale of PHI
  - Right to request restrictions
- **Other Content:**
  - Research authorizations, Student immunization records, Decedent information

Genetic Information Non-discrimination Act

- NPRM issued October 7, 2009
- Comments due by December 7, 2009
  - Approximately 25 comments were received
- CMS/DOL/IRS issued IFR (Oct. 2009)
  - Title I – nondiscrimination by health plans
- EEOC issued Final Rules (Nov. 2010)
  - Title II – nondiscrimination by employers

GINA Title I Privacy

- Section 105 regarding privacy and confidentiality amends Part C of Title XI of the Social Security Act by adding section 1180.
- Section 1180 requires revision of the Privacy Rule to:
  - clarify that genetic information is health information; and
  - Prohibit health plans from using or disclosing genetic information for underwriting purposes.

OCR GINA Final Rule

- Joint Definitions
- Coverage of Health Plans
- New Prohibition

Accounting for Disclosures

- Request for Information (May 2010)
  - 174 comments received
- ONC Certification Standards
  - IFR issued (January 2010)
  - Final standards (July 2010)
  - Accounting certification criteria made optional for Meaningful Use Stage 1
- Notice of Proposed Rulemaking
  - At OMB (February 2011)

Want More Information?

- The OCR website is:
  http://www.hhs.gov/ocr/privacy/

- My contact is:
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