Lessons Learned from Recent HIPAA Enforcement Actions, Breaches, and Pilot Audits

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OCR RULEMAKING UPDATE
What's Done? What's to Come?

HCCA Compliance Institute
### What’s Done:

**Omnibus Final Rule**
- De-identification
- Combined Regulation Text
- Sample BA provisions
- Refill Reminder
- Factsheets on Student immunizations and Decedents

**Model Notice of Privacy Practices**

**Guide to Law Enforcement**

**Permitted Mental Health Disclosures**

**HIPAA in Emergency Situations**

**HIPAA and Same-Sex Marriage**

**Letters from the Director**
- Dear Provider – duty to warn, serious and imminent threats
- Right to access – updated for e-access requirements

### What’s to Come:

**Omnibus Final Rule**
- Breach Safe Harbor Update
- Breach Risk Assessment Tool
- Minimum Necessary
- More on Marketing
- More Factsheets on other provisions

**Model Notice**
- On-line version

**Other Guidance**
- Security Rule guidance updates

### REMINDER of Changes to the Rules:

- Security Rule: BAs (and subcontractors) now directly liable
- Privacy Rule: BAs (and subcontractors) now directly liable for:
  - impermissible uses and disclosures;
  - non-compliance with their BA Agreements; and
  - certain individual rights.
Revised Definition of “Breach:”

Breach Presumed UNLESS:

• “LoProCo:” The CE or BA can demonstrate that there is a low probability that the PHI has been compromised based on:
  – Nature and extent of the PHI involved (including the types of identifiers and the likelihood of re-identification);
  – The unauthorized person who used the PHI or to whom the disclosure was made;
  – Whether the PHI was actually acquired or viewed; and
  – The extent to which the risk to the PHI has been mitigated.

Focus on risk to the data, instead of risk of harm to the individual.

Risk Assessment must be documented.
September 2009 through February 27, 2015

- Approximately 1,144 reports involving a breach of PHI affecting 500 or more individuals
  - Theft and Loss are 60% of large breaches
  - Laptops and other portable storage devices account for 32% of large breaches
  - Paper records are 22% of large breaches

- Approximately 157,000+ reports of breaches of PHI affecting less than 500 individuals
LESSONS LEARNED

Appropriate Safeguards Prevent Breaches

- Evaluate the risk to e-PHI when at rest on removable media, mobile devices and computer hard drives
- Take reasonable and appropriate measures to safeguard e-PHI
  - Store all e-PHI to a network
  - Encrypt data stored on portable/movable devices & media
  - Employ a remote device wipe to remove data when lost or stolen
  - Consider appropriate data backup
  - Train workforce members on how to effectively safeguard data and timely report security incidents
### Status of All Complaints
April 14, 2003 - January 31, 2015

- Complaints Remaining Open (6%) - 6,384
- Complaints Resolved (94%) - 103,338

Total Complaints Received 109,722

*Referrals to DOJ - 544

### Total Investigated Resolutions
April 14, 2003 - January 31, 2015

- Corrective Action Obtained (Change Achieved) (69%) - 23,366
- No Violation (31%) - 10,603

Total Complaints Investigated 33,969
Lessons Learned:

- HIPAA covered entities and their business associates are required to undertake a careful risk analysis to understand the threats and vulnerabilities to individuals’ data, and have appropriate safeguards in place to protect this information.

- Take caution when implementing changes to information systems, especially when those changes involve updates to Web-based applications or portals that are used to provide access to consumers’ health data using the Internet.

- Senior leadership helps define the culture of an organization and is responsible for knowing and complying with the HIPAA privacy and security requirements to ensure patients’ rights are fully protected as well as the confidentiality of their health data.
No findings or observations for 13 entities (11%)
- 2 Providers, 9 Health Plans, 2 Clearinghouses

Security accounted for 60% of the findings and observations—although only 28% of potential total.

Providers had a greater proportion of findings & observations (65%) than reflected by their proportion of the total set (53%).

Smaller, Level 4 entities struggle with all three areas

Internal analysis for follow up and next steps
- Creation of technical assistance based on results
- Determine where entity follow up is appropriate
- Identify leading practices

Protocol Updates
- Revise CE Protocol to reflect Omnibus Rule
- Develop BA Protocol

Future program design and focus
- Business Associates: Identify the population.
- Identify areas of focus for future audits.
- Accreditation /Certification correlations?
AUDIT PHASE 2 APPROACH

- Primarily internally staffed
- Selected entities will receive notification and data requests
- Entities will be asked to identify their business associates and provide their current contact information
- Will select business associate audit subjects for first wave from among the BAs identified by covered entities
- Desk audits of selected provisions
- Comprehensive on-site audits as resources allow

AUDITS PHASE 2 EXPECTATIONS

Data request will specify content & file organization, file names, and any other document submission requirements

Only requested data submitted on time will be assessed.

All documentation must be current as of the date of the request.

Auditors will not have opportunity to contact the entity for clarifications or to ask for additional information, so it is critical that the documents accurately reflect the program.

Submitting extraneous information may increase difficulty for auditor to find and assess the required items.

Failure to submit response to requests may lead to referral for regional compliance review
New Guidance:

The HIPAA Omnibus Rule
https://www.youtube.com/watch?v=mX-QL9PoePU

Consumer Awareness:

Your New Rights Under HIPAA - Consumers
https://www.youtube.com/watch?v=3-wV23_E4eQ

Over 262,000 views since September 4, 2013
Mobile Devices:

http://www.healthit.gov/mobiledevices

http://www.hhs.gov/ocr/privacy/hipaa/modelnotices.html
Medscape Resource Center:

http://www.medscape.org/sites/advances/patients-rights

More Guidance:
• Business Associates
• Breach Notification Rule
• Security Rule
• Individual Rights
• Other Privacy and Security Rule Topics

More Training:
• Online Training Modules
Audit Program
QUESTIONS?