Health Information Privacy & Security: Recent Developments & Enforcement Actions

Healthcare Enforcement Compliance Institute
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AGENDA

- Introductions
- Trends in Large $ Penalties
- Enforcement Themes from Recent and/or Large $ Cases
- Audit Updates
- Questions
23 Penalties over $1,000,000

Million $ & Over Penalties by Year

Focus on Risk Assessments
Think HIPAA’s No Big Deal?

- Failure to address or fully remediate risks identified and documented prior to incidents have resulted in recent fines of $3.2M and $5.5M
  - Access controls to ePHI
    - former employee ID
  - Encryption of mobile devices

Think HIPAA’s No Big Deal?

$5.5 Million for failure to:
- Conduct a thorough risk assessment for ALL their ePHI (not just the EMR);
- Have sufficient physical controls to data centers;
- Obtain assurances from Business Associates on safeguarding ePHI;
- Protect an unencrypted laptop.
Think HIPAA’s No Big Deal?

$2.7 Million for failure to:
- Perform a full risk assessment for all ePHI;
- Store ePHI with a cloud provider without a BAA;
- Maintain ePHI only on encrypted devices.

Think HIPAA’s No Big Deal?

$2.5 Million fine - Stolen laptop with ePHI of 1391 individuals
- No risk assessment or risk management processes in place
- No policies or procedures for mobile devices
- Security Rule policies ALL in draft form!
Focus on Encryption & Safeguards

Think HIPAA’s No Big Deal?

- A physician attempted to deactivate a personally owned computer which opened up a Covered Entity’s network firewall, allowing internet access to PHI.

- A University & its affiliated hospital paid $4.8 Million for that failure.
Think HIPAA’s No Big Deal?

- What’s the cost of a lost or stolen laptop?
- Encrypted: $0 in fines
- Unencrypted: $3.9 Million paid when 1 laptop with information on 13,000 research patients was stolen

Think HIPAA’s No Big Deal?

$2.75 Million settlement for failure to:
- Restrict workstation access to only authorized users;
- Assign a unique user identity in systems containing ePHI;
- Implement policies & procedures to prevent, detect, contain and correct security violations;
- Have sufficient data to appropriately notify each individual if their PHI had been breached.
Think HIPAA’s No Big Deal?

- ePHI of 31,800 people left open to the internet for a little over a year
- Failure to recognize the risk of a new server
- No enterprise-wide Risk Assessment

A firewall is of little value if everything isn’t behind it.

A health plan paid $1.7 Million in fines because a weakness in 1 program left their network and the ePHI of over 600,000 individuals open to the internet!
Focus on the Basics

Think HIPAA’s No Big Deal?

$5.5\text{Million}$ for failure to provide reasonable access controls resulting in impermissible access to PHI of over 115,000 individuals:

- Did NOT turn off access for a former employee of an affiliated physician practice
- Did NOT monitor access to ePHI
Think HIPAA’s No Big Deal?

- **$2.4 Million** plus a Corrective Action Plan
  - *Appropriate* notice to Law Enforcement of patient involved in possible medical identity fraud
  - *Inappropriate* release of the story, including the patient’s identity, in a press release!

Think HIPAA’s No Big Deal?

- A NYC hospital paid **$2.2 Million** for:
  - Permitting disclosure of PHI on 2 patents without an authorization while filming a TV program;
  - Permitting unrestricted access by the film crews to the facility increasing the likelihood of other inappropriate disclosures.
Think HIPAA’s No Big Deal?

■ Failure to have Business Associate Agreements with vendors who have access to PHI have resulted in recent settlements of $750K and $1.55M!

Think HIPAA’s No Big Deal?

■ PHI must be protected when it travels!
■ A clinic schedule and encounter forms were left on a Boston subway by a hospital employee
■ $1 Million fine was paid by the hospital
Think HIPAA’s No Big Deal?

- Failure to provide appropriate notice of lost PHI of 836 individuals contained on paper schedules within the required 60 days
  - Individuals
  - Media
  - Office for Civil Rights

$475,000 Paid

Think HIPAA’s No Big Deal?

- Patient requested information be sent to a personal post office box. Provider instead faxed PHI to his employer, including
  - HIV status
  - Mental health history
  - Sensitive diagnoses

$387,000 Paid
Think HIPAA’s No Big Deal?

Office for Civil Rights
Audit Updates

- Phase II audits of Covered Entities are Complete
- Phase II audits of Business Associates are in final steps
- There were no onsite audits in Phase II—the these were only desk audits
- The Phase III will include onsite audits
Think HIPAA’s No Big Deal?

- There will be a summary report to follow the completion of the Phase II audits—it could be published as early as this year
- None of the Phase II audit respondents were moved to the Compliance (Penalty) track
- There were an unknown small number of audit candidates who elected not to respond to the desk audit—these facilities are in the Compliance (Penalty) track

Think HIPAA’s No Big Deal?

- The HHS Deputy Director Devin McGraw commented on the state of upcoming guidance
- There will be forthcoming additional guidance on Minimum Necessary and the sharing of settlement payments with patients
- She does not expect OCR to release updated guidance on Accounting of Disclosures anytime in the near future
Think HIPAA’s No Big Deal?

What’s next?
- keep up to date through enforcement trends
- Watch for news releases (OCR listserve)
- Communicate with leadership on risks
- Have a plan, execute and document

Questions?

Thank you!

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