

Health Information Privacy & Security: Recent Developments & Enforcement Actions

Healthcare Enforcement Compliance Institute
October 29, 2017

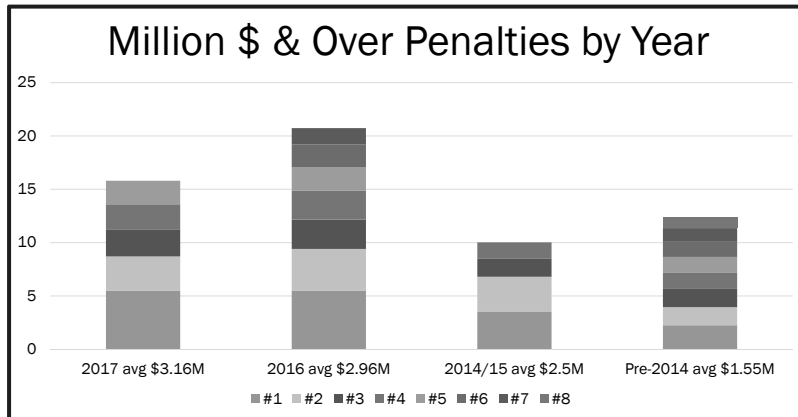
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AGENDA

- Introductions
- Trends in Large \$ Penalties
- Enforcement Themes from Recent
and/or Large \$ Cases
- Audit Updates
- Questions

23 Penalties over \$1,000,000



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*



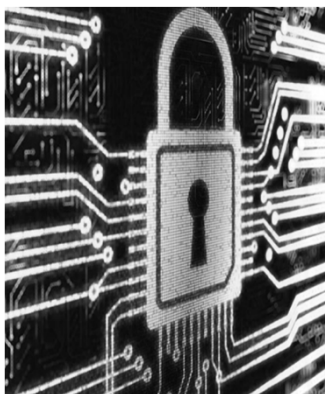
Think HIPAA's No Big Deal?

\$5.5Million 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.

HIPAA Hotline 214-456-4444

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!

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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 **\$4.8Million** 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?

\$2,140,500
settlement



- 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

Think HIPAA's No Big Deal?

- A firewall is of little value if everything isn't behind it.
- A health plan paid **\$1.7Million** 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?

\$5.5Million 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?

- **\$2.4Million** 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 **\$2.2Million** 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
- **\$1Million** 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

Think HIPAA's No Big Deal?

- 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—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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