Toto we are not in Kansas any more: OCR audits, BAs and data breaches oh my!

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Founded in 2004
CynergisTek has been providing services to our clients since 2004, but many of our clients have been with one or both of the founders since well before the company was founded.

Synergistic
The name “CynergisTek” came from the synergy realized by combining the expertise of the two co-founders – building scalable, mature information security programs and architecting enterprise technical solutions.

Consulting Services
CynergisTek provides consulting services and solutions around information security, privacy, IT architecture, and audit with specific focus on regulatory compliance in healthcare.

Securing the Mission of Care
CynergisTek Services are specifically geared to address the needs of the healthcare community including providers, payers, and their business associates who provide services into those entities.

Agenda

Safeguard PHI by Managing Vendors
OCR Enforcement Outlook
OCR Desk Audit Update
Cybersecurity Updates for Compliance
Vendor Security Must Improve

- Requirements Definition
- Pre-Contract Due Diligence
- Contract Security Specifications
- Performance Monitoring
- Breach Notification
- Contract Termination
- Documentation

Defining Requirements

- Examine Scope of Effort
- Determine What Level of Minimum Necessary
- Identify Security Requirements
- Develop SLAs for Privacy and Security
- Incorporate into RFI, RFP and/or SOW
- Classify Vendor

Due Diligence: Pre-Contract

- Tailor requests to scope of contract
- Security standard followed
- Include privacy and security questionnaire
- Request documentation
- Review third party assessments
- Proof of Training
- Conduct site visit
- Privacy and security incident history
Contract Security Specifications

- Define expectations, material changes, subcontractors
- Minimum Necessary
- Transmission, storage & processing
- Incident response
- Audit/monitoring
- Reporting requirements
- Contingency operations

Maintenance

- For contracts lasting more than 6 months
- Periodic audits of key processes
- Testing of contingency plans/operations
- Renewal of third party assessments

Breach Notification

- Timeliness of notifications
- Assistance in investigation/risk assessment
- Indemnification for certain costs
- Notifications to public
Additional considerations

- Language of your BAA
  - Definition of a security incident and BA’s obligation to notify you
  - Definition of a breach and BA’s obligation to notify you.

Contract Termination

- Termination for cause vs. end of contract
- Disposition of data if in receipt
- User/system access
- Reminder of Minimum Necessary
- Other continued responsibilities

OCR Enforcement Outlook
OCR Update

Settlements
Memorial Health System settled for $5.5M over inappropriate access by its own employees & employees of affiliated physician offices.
CardioNet settled for $2.5M because of lack of appropriate security program/no device media control measures.
Presence Health Network settled for $400K over failure to timely notify of a breach.

Guidance
OCR guidance that ransomware incidents are breaches. Cloud computing guidance that any vendor handling PHI is a BA. Also guidance on patient access to PHI. Guidance on breach notification, minimum necessary and distribution of penalties still to come.

OCR Enforcement
• Most resolution agreements cite to Security Rule
  – Enterprise wide risk analysis is foundation
  – Expectation that encryption is used on all portable and mobile devices & media
  – Encryption of network servers when reasonable and appropriate
  – Managing/controls of device & media
  – Contingency planning

• Seeing compliance reviews that:
  – Ask for documentation that goes well beyond the issue that originally brought OCR to the door
  – Ask for documentation around multiple reports of small breaches
**Key Issues in OCR's Enforcement Cases**

- Business Associate Agreements
- Risk Analysis
- Failure to Manage Identified Risk, e.g. Encrypt
- Lack of Transmission Security
- Lack of Appropriate Auditing
- No Patching of Software
- Lack of appropriate access monitoring
- Improper Disposal
- Insufficient Data Backup and Contingency Planning

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**OCR Desk Audit Update**

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**OCR's Audit Findings**

- Total covered entities audited 166
  - 103 for Privacy and Breach Rule compliance
  - 63 for Security Rule compliance
  - Break down of covered entities
    - 9% Health Plans
    - 1% Clearinghouses
    - 90% Providers
- Business Associates audited 41
  - All assessed for Breach Notification and Security Rule compliance
OCR Audit Findings

OCR comments about the audit process: Under OCR’s separate, broad authority to open compliance reviews, OCR could decide to open a separate compliance review in circumstances where significant threats to the privacy and security of PHI are revealed through the audit.

Random Audit RoF Scale

Privacy and Breach Notification Rules

<table>
<thead>
<tr>
<th>Rating at each end of the rankings for all entities (103)</th>
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<tbody>
<tr>
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<tr>
<td>Timeliness of Notification</td>
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<tr>
<td>Content of Notification</td>
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<td>Privacy Rule</td>
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<tr>
<td>Access</td>
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<td>NPP Content</td>
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### Privacy and Breach Notification Rules

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### Cybersecurity

#### Evolving Healthcare Threat Landscape

**Cyber Incidents**

- **2009 - 2011:** Stolen HD
- **2012 - 2014:** AvMed
- **2015:** Stolen Laptops
- **2016:** Stolen Backup Tapes
- **2017:** Computer Theft
- **2018:** Hacking
- **2019:** Hacking

**Disruption**

- **2009 - 2011:** BCBS Tenn
- **2012 - 2014:** Advantage Medical
- **2015:** Advocate Medical
- **2016:** Anthem
- **2017:** Premera
- **2018:** CHS
- **2019:** Save First
- **2020:** Haley VA
- **2021:** St. Francis
- **2022:** Brittany Health

**Evolving Healthcare Threat Landscape**

- **2009 - 2011:** Multiple DDOS
- **2012 - 2014:** Hacktivism
- **2015:** Extortion
- **2016:** Ransomware
- **2017:** DDoS

11/27/2017
Cybercrime “IS” a Business

The Justice Department predicted Cybercrime would generate $600B in revenues in 2016
• Cybercrime-as-a-service model* gives less technically-savvy criminals access
• Dark web marketplaces make “monetizing” stolen data as easy as buying on Amazon
• Cybercriminals are adopting tactics previously only used by nation-state attackers

Cyber Extortion is Rampant

• First appeared around 2005
• Two forms: Crypto ransomware (data) and Locker ransomware (system)
• Sophisticated attacks use:
  • New asymmetric keys for each infection
  • Industrial strength & private/public key encryption
  • Privacy enabling services like TOR and Bitcoin for payments
• Indifferent to target, everyone is a target (home/business)
• Malvertising, spam email, downloaders/botnets & social engineering

The United States is the largest target worldwide by a huge margin. SOCs worldwide report as much as a 10X increase in ransomware attacks from December to January with no abatement.

Percentage of Phishing Emails Delivering Ransomware

Source: PhishMe Q1 Malware Review

Percentage of phishing emails delivering ransomware
0% 10% 20% 30% 40% 50% 60% 70% 80% 90% 100%

**Should You Pay Ransom for Your Data?**

- US Dept. of Justice Guidance on Ransomware says "No"
- Paying a ransom does not guarantee an organization will regain access to its data; in fact, some victims were never provided with decryption keys after paying ransom
- Some victims who paid the demand have reported being targeted again by cyber actors
- After paying the originally demanded ransom, some victims have been asked to pay more to get the promised decryption key
- Report ransomware incidents to the FBI using the checklist of information that is helpful to them

**Ubiquitous Is The New Paradigm**

- Smart phones
- IoT
- Social media
- POS systems
- Medical devices
- Removable media (USBs)
- SPAM & email
- Applications
- Smart TVs
- CCTV cameras
- Environmental systems
- Downloads
- Attachments
- Browsers
- Wearables
- Telehealth

*Threats are introduced from all directions, simple compliance strategies will not suffice, an integrated set of controls is needed.*

**The Insider Threat**

- 93% feel vulnerable to insider threats
- 59% worry about privileged users most
- Contractors/service providers next biggest concern
- 2010-2015 20% increase in ID/Med ID theft
- 37% feel user awareness training is failing
- Traditional audit methods are failing right and left
Responding to Cybersecurity Incidents

• What is the scope of incident: What networks, systems or applications are affected?
• Where was the origin of the incident in your network?
  – Who/what/where/when
• Determine whether incident is finished, ongoing or has propagated additional incidents throughout the environment
• How did the incident occur?
• Contain the impact and propagation of the ransomware
  – Tools and attacks methods used, vulnerabilities exploited
• Eradicate the instance of the ransomware

Questions?

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