Getting OCR Audit-Ready in 7 Steps:

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Remember first of all...

Pursuant to the HIPAA Security Rule provision on Audit Controls, 45 C.F.R. sec.164.321(b):

• Covered Entities and Business Associates must implement hardware, software and/or processes that both record and review activity in IT systems containing or using electronic PHI.

Audit Insight from the recent OCR Enforcement Landscape

• Among Others in 2016:
  • University of Mississippi Medical Center
  • Oregon Health & Science University
  • $2.7M CMP imposed against each CE
  • Failure to act on identified problems/risks
• Already in 2017:
  – 3 Major CMP Cases
  – Presence Health Network ($475k), Children’s Hospital of Dallas ($3.2M CMP imposed), Memorial Health Care System ($5.5M)
An Audit Roadmap to Learn From...
Memorial Health Care System (2/16/17)

OCR Findings:
• Impermissible disclosure of PHI in violation of the Privacy Rule
• Failure to implement procedures to regularly review records of information system activity such as audit logs
• Failure to implement policies and procedures to review and modify users’ access to PHI.

OCR Audit Control Guidance (Jan. 2017)

• Secure Audit Logs & Audit Trails
  • Audit Logs: Records of events based on applications, users, systems (NIST)
  • Audit Trails: Maintain a record of system activity by application and user activity (NIST)
• Use “reasonable and appropriate” tools to collect, monitor and review* audit controls
  • * Restrict review access: need-to-know basis only

OCR Audit Control Guidance (Jan. 2017) (Cont’d)

• Lack of access controls and failure to regularly review audit logs enables hackers and wrongdoing insiders to cover their tracks
• Implementing audit controls and reviewing audit logs regularly:
  • Facilitates easier recovery from breaches
  • May help prevent them from happening in the first place
Types of Audit Trails

Application
- Monitors and logs user activities; when data files are opened/closed, created, read, edited or deleted

System-level
- Tracks successful/unsuccessful log-on efforts; and what application the user was seeking to access

User
- Monitors user activity by tracking events user initiates (log-on attempts, access to files, etc.)

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7-Steps to OCR Audit-Readiness

• Gather your Team (in-house, external resources as needed (i.e, Privacy/HIPAA Counsel, Forensics)
• Determine “Reasonable and Appropriate” Audit Controls to be Implemented
• Conduct/Update enterprise-wide Risk Analysis/Risk Assessment of security risks/weaknesses
  • Understand first what PHI and Tech/IT inventory/assets you actually have

7-Steps to OCR Audit-Readiness (Cont’d)

• Implement or Review enterprise-wide Risk Management Plan (to address identified risks/gaps/weaknesses)
  • Implement/Enforce/Test/Revise as Needed
  • Document, Document, Document
  • Rationale for Resource Allocation/Plan for Addressing Non-Compliance where Applicable
• Review/Revise Policies & Procedures As Needed for:
  • Information systems activity review;
  • Establishing, modifying and terminating access
  • Provide Workforce Training
• Regularly review ALL of the above in normal course of business
What are “Reasonable and Appropriate” Audit Controls?

- Consider Your Risk Analysis results as well as current:
  - Infrastructure
  - Hardware and software security capabilities
  - Commensurate with available financial and human resources
  - What your Policies & Procedures can support

4-Factor Risk Assessment

- Identify your risks/vulnerabilities
- Determine remediation steps needed
- Allocate Resources to address; Outline a rationale (and plan) where not currently addressing a particular risk/vulnerability
- TAKE ACTION to address the risks identified
  - Identified risks/vulnerabilities set the FLOOR of remediation responsibility
  - Clock is ticking from this point...until an event occurs
  - Don’t wait to address
  - At minimum: document when/what steps will be taken for all identified risks

Be Aware of OCR’s past hot buttons...

- Implement robust physical safeguards
  - No unrestricted access to unauthorized individuals
  - Implement Access Controls & Device/Media Controls

- Encrypt and password-protect all points of data access
  - Not required, but consider at minimum:
    - Document reasons for current status if not fully encrypted as Risk Analysis/Assessment will likely point to risks of unencrypted PHI
- Implement/Distribute & Enforce a mobile device policy
QUESTIONS?
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