Health Information Privacy & Security:
Recent Developments & Enforcement Actions

Healthcare Enforcement Compliance Institute
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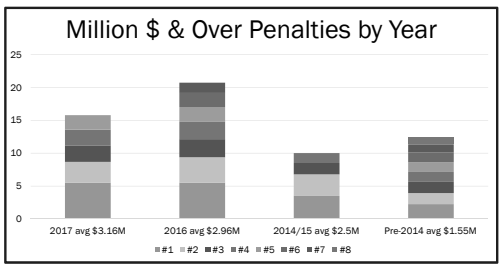
AGENDA

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

23 Penalties over $1,000,000



Focus on Risk Assessments

Think HIPAA's No Big Deal?

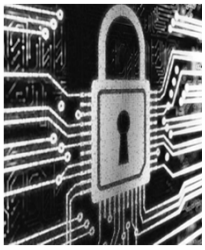
- Failure to address or fully remediate risks identified and documented prior to incidents have resulted in recent fines of **$3.2M** and **$5.5M**
  - *Access controls to ePHI – former employee ID*
  - *Encryption of mobile devices*

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?



$2.7Million 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?

$2.5Million 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 **$4.8Million** for that failure

Think HIPAA's No Big Deal?

- What's the cost of a lost or stolen laptop?
- Encrypted: $0 in fines
- Unencrypted: **$3.9Million** 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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