



HIPAA/HITECH enforcement unlikely to abate

Question: As a solo practitioner, I’m feeling a bit overwhelmed by the HIPAA/HITECH requirements and penalties that may be levied against me if there’s a breach of protected health information under my control. Is enforcement likely against small providers under the new presidential administration?

Answer: Although it looks like the Affordable Care Act may be replaced, I would not assume that enforcement efforts pertaining to breaches of the Health Insurance Portability and Accountability Act (HIPAA) or the Health Information Technology for Economic and Clinical Health Act (HITECH) will be diminished under the Trump administration. These efforts, which have brought money into the government’s coffers, will likely continue in the future.

As mentioned in past columns, counselors who are HIPAA “covered entities” should make it a priority to ensure that their privacy and security policies and procedures are up to date and that they know what to do in the event of a breach, including the loss or theft of paper or electronic records, smartphones, computers and other devices. For additional information on HIPAA/HITECH compliance, see hhs.gov/hipaa/for-professionals/index.html.

The U.S. Department of Health and Human Services Office for Civil Rights (OCR) has already published details of a 2017 HIPAA settlement that resulted from the late reporting of a breach of protected health information (PHI).

According to OCR, Presence Health, a network composed of hospitals, long-term care facilities, home care providers, hospice services and behavioral health services, paid \$475,000 and implemented a corrective action plan following its failure to provide timely notice to patients, the government and the media regarding missing paper-based operating room schedules.

Presence Health gave notice, but it was provided slightly more than three months after the breach rather than within the 60-day period required by law. OCR did not accept the tardiness of the reports, maintaining that miscommunication among members of Presence Health’s workforce did not excuse the delay. Rather, OCR stressed the need for HIPAA covered entities to have clear policies and procedures in place to respond to the HITECH breach notification rule’s timeliness mandate.

Less than two weeks after announcing this first HIPAA settlement of 2017, OCR released details of another settlement in the amount of \$2.2 million. This settlement was based on the theft of a data storage device that had been left unsecured and unencrypted in an insurance company’s information technology department overnight (see hhs.gov/about/news/2017/01/18/hipaa-settlement-demonstrates-importance-implementing-safeguards-epi.html).

By the time you read this column, OCR will likely have announced other settlements and actions involving privacy breaches.

This does not mean that the largest fines and settlements are likely to

be imposed against small providers. However, it does mean that all HIPAA covered entities, including counselors, are responsible for compliance with HIPAA and HITECH rules and are not immune from potentially ruinous fines and settlements. More than \$22 million was paid to OCR in 2016 to resolve alleged HIPAA violations. Don’t assume that this amount will decrease in 2017 or beyond.



The question addressed in this column was developed from a de-identified composite of calls made to the Risk Management Helpline sponsored by the American Counseling Association. This information is presented solely for educational purposes. For specific legal advice, please consult your own local attorney. ♦

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