



Know your state's data breach reporting law

Question: I consulted with a local health care attorney when I set up my private counseling practice a couple of years ago, so I am fairly confident that I am compliant with HIPAA (the Health Insurance Portability and Accountability Act). However, a colleague mentioned there are new state requirements that may apply in the event of a data breach. Can you shed any light on this?

Answer: In past issues of *Counseling Today*, we have covered many aspects of HIPAA, HITECH (the Health Information Technology for Economic and Clinical Health Act) and potential obligations under federal law that counselors may have when it comes to breaches of protected health information. However, you and other counselors who are HIPAA “covered entities” may also have obligations that extend beyond federal law.

Currently, every state in the nation has passed some form of data breach notification law. Not all of these laws specifically address protected health information, but they may apply to you and other counselors who conduct credit card transactions and who store or transmit personal information that could be vulnerable to hackers. In addition, an increasing number of states have enacted their own breach notification laws that

do apply specifically to protected health information. Some states have amended their existing data breach notification laws to include health information.

A number of health care entities and law firms have published useful 50-state breach notification maps and summaries that may include information pertinent to your practice and to counseling practices across the country. For example, see dwt.com/statedatabreachstatutes and tinyurl.com/HITSDataBreach.

Maryland is one state that updated its data breach security law, effective January 2018. The Maryland law broadened the definition of “personal information” to include medical history, diagnoses and health insurance policy information (for more information, see tinyurl.com/HITSMaryland).

Although similarities exist among state laws, there are also crucial variations. The key differences among states' data breach reporting laws include the following:

- ❖ Time frames for reporting (e.g., 30 versus 45 days)
- ❖ Entity to which notice must be given (e.g., state attorney general's office and/or state consumer agency)
- ❖ Scope of personal information (in addition to name, address, Social Security number and other identifiers, newly delineated items may include user names and passwords)

It is likely that state laws will continue to be amended to include items such as biometric markers (fingerprints, retinal scans, etc.) that were not covered in prior iterations of the law.

Counselors are encouraged to be aware of changing laws on the state level, as well as possible changes on the federal level, regarding data breach notification. Data breaches are a reality in today's world, and preparation is key to helping protect both clients and counselors. ♦

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