



## Protected health information and the HIPAA breach portal

**Question:** I recently had to report a HIPAA/HITECH breach of protected health information to the U.S.

Department of Health and Human Services Office for Civil Rights (HHS OCR) because my laptop was stolen. This was a difficult and expensive lesson. I am concerned about the effect of this public report on my reputation and am also concerned that a few of my clients with anxiety or obsessive-compulsive disorder may ruminate about this breach because it is posted online. I heard from a colleague that the government was considering limiting the amount of time such a report appears on the HHS OCR website. Is this true? When will this information about the breach be removed from the website?

**Answer:** The federal government recently made substantial changes to its Health Insurance Portability and Accountability Act (HIPAA) breach portal (commonly referred to in Washington, D.C., as the HIPAA “Wall of Shame”). See [ocrportal.hhs.gov/ocr/breach/breach\\_report.jsf](http://ocrportal.hhs.gov/ocr/breach/breach_report.jsf). To address your question, I’ll provide a brief history of this tool and an explanation of the government’s action.

Congress passed the Health Information Technology for Economic and Clinical Health (HITECH) Act in 2009. That law requires HHS OCR to maintain a public list of breaches of protected health information involving

500 or more individuals; thus, the breach reporting tool was created. The law does not specify how long the information must be retained on the portal, however. A number of people raised concerns, similar to yours, that the portal was overly punitive to providers who may have been the victims of circumstances over which they did not have full control, such as theft or hacking.

On July 25, HHS OCR issued a press release that unveiled changes to the online breach reporting tool (see [hhs.gov/about/news/2017/07/25/hhs-unveils-improved-web-tool-highlight-recent-breaches-health-information.html](http://hhs.gov/about/news/2017/07/25/hhs-unveils-improved-web-tool-highlight-recent-breaches-health-information.html)). The portal now displays the most recent breaches first. Breaches reported more than two years prior to the current date are now archived, along with closed investigations. Additionally, HHS OCR will provide a full list of breaches going back to 2009 for research purposes.

According to the press release, the changes to the breach reporting tool should enhance functionality, improve navigation, archive the older material and provide tips for consumers. The main purposes of the revised tool are to help individuals identify breaches and educate the industry to improve security.

Back to your question: Although the focus of the new tool is on *recent* breaches and steps taken to resolve those breaches, your information will be archived after two years. In short, although your information will not remain visible on

the main page, neither will it disappear from the site completely, at least for the foreseeable future.

Something else important for counselors to be mindful of is that even breaches affecting fewer than 500 individuals or clients require year-end reports to HHS OCR. These smaller breaches are not included on the online portal, however. More information is available at [hhs.gov/hipaafor-professionals/breach-notification](http://hhs.gov/hipaafor-professionals/breach-notification).



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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