

What's Your Compliance IQ?

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(COMPLIANCE HOTLINE 1-888-235-7554;
Deltapathology.ethicspoint.com)



HIPAA News

HHS Office of Civil Rights has issued a bulletin on HIPAA requirements under HIPAA for online tracking technologies to protect PHI. Some regulated entities regularly share ePHI with online tracking vendors & some may be doing so in a way that violates HIPAA rules.

Tracking technologies are used to collect & analyze data about how users interact with regulated entities' websites or apps. HIPAA applies when the information entities collect through tracking technologies or disclose to tracking technology vendors includes PHI. A person provides individually identifiable information when using a website or mobile app.

HHS OCR has confirmed the use of third party tracking technologies on websites & mobile apps without a

Business Associate Agreement is a HIPAA violation if it collects & transmits individually identifiable health information; a HIPAA violation can still occur with a BAA in place.

To prevent breaches, always keep PHI confidential & follow company policies regarding HIPAA/PHI. Examples of breaches-do NOT do:

- Sending PHI to the wrong recipient by fax or other means of communication
- Sharing PHI on social media, blogs, or with family or friends
- Throwing any form of PHI in the trash instead of shredding it
- Reviewing medical records when unnecessary to perform duties of your job

Some ransomware gangs have begun to use triple threat extortion tactics to add more pressure on victims

to pay up. It can take several different forms such as contacting the individual patients whose contact information (in the stolen data) to try to extort money from them. Clients of victims or media have also been called tipping them off about the attack. Another tactic has been to frame executives of public companies by editing email inboxes to appear as if they have been engaging in insider trading. Tactics & techniques are constantly changing, & with fewer victims paying ransoms, tactics are likely to be more aggressive.

November had 31% fewer breaches reported than in October with 49 involving 500 or more records (well below the average of 58/month). The # of records breached, however, increased in November (10%); it had the most of any month in 2022 (> than 1M records involved in 3 of them).

Compliance News

A recent *Qui Tam* Whistleblower lawsuit was *pro se* meaning he was not represented by an attorney. While whistleblowers are allowed to sue on the government's behalf, the whistleblower represents the government's rather than his/her own interest; i.e., it is the government's case & not the whistleblower's. Whistleblowers may file *pro se* lawsuits when bringing THEIR Own cases. Allowing *qui tam* suits *pro se* would drastically reduce the costs of False Claims Act whistleblower litigation which would likely lead to a significant increase in the number of *qui tam* lawsuits.

From the outset of the public health emergency (PHE), Congress adopted a clear policy on private insurance payment for COVID-19 tests. The test cost must be covered with-

out charging patients any copayment or other charges & labs must be reimbursed at the "negotiated price" or "cash price" for the test listed on a public website of a lab. These principles were embedded in the CARES Act passed in March, 2020 & affirmed in the Families First Coronavirus Response Act passed in April, 2020.

To date, many COVID-19 testing labs are struggling to get private payor reimbursement. Federal courts also have not allowed those labs to sue insurers for violating the CARES Act.

A north central AR medical center has proposed a \$295,000 settlement of a class action suit filed for victims of a 2019 data breach. It occurred when emails containing PHI

were accessed by unauthorized individuals after associates responded to phishing emails. 37,000 patients were affected by the breach.

A new icon in the CAP Accreditation checklist edition released in October makes it easier to know if a written policy or procedure is needed for compliance with a requirement & makes it easier to inspect or be inspected.

The icon, a stylized document page, appears under the requirement number to flag it for the need of a policy or procedure. It does not mean a separate p/p is needed for individual requirements; a single p/p can cover multiple checklist requirements. It is believed this will clarify interpretation for the need of a p/p.

Safety

Chemical manufacturers, distributors, & importers must provide Safety Data Sheets (SDS) for each hazardous chemical to communicate the hazards of hazardous chemicals. The product label must have the chemical identity & appropriate hazard warnings.

There are nine Pictograms under the Globally Harmonized System (GHS) to convey the health, environmental, & physical hazards—the Hazard Communication Standard requires 8; environmental hazards are not under OSHA jurisdiction.

Definitions to know on SDS:

- **Pictogram**-symbol + other

graphic elements intended to advise about hazards of a chemical.

- **Signal Words**-single word used to communicate relative level of hazard severity & to alert to a potential hazard; **danger** is for more severe hazards; **warning** for less severe hazards.
- **Hazard Statement**-assigned to a hazard class/category describing nature of hazard(s) including, when appropriate, the hazard degree.
- **Precautionary Statement**-description of recommended measures to minimize or prevent adverse effects from exposure to the hazardous chemical, improper storage, or handling.

Musculoskeletal disorders (MSD) affect the muscles, nerves, blood vessels, ligaments & tendons. Ergonomics, fitting the job to the person, helps lessen muscle fatigue, increases productivity, & reduces the number & severity of MSDs.

Associate education is an important element of ergonomics. Associate involvement in the process is important for identifying & assessing ergonomics problems before they result in MSDs. Early reporting of MSD symptoms can accelerate the job assessment & improvement process helping to prevent or reduce symptom progression, serious injury, & subsequent lost time claims.

Miscellaneous

There are 8 new CLIA waived tests effective 4-1-23:

- AmVentureX, Inc-BioCoach Blood Glucose & Ketone Monitoring System
- Micro Distributing STATDIP One Step Drug Test
- Micro Distributing STATCup II One Step Drug Test Cup
- Clarity Diagnostics LLC Clarity Strep A Rapid Test Strip
- Independent Medical Co-Op, Inc IMCO Strep A Rapid Strep Test Strip

- Instant Technologies Inc iScreen Urine Test Dx Drug Screen Square Cup
- Verséa Holdings Inc Verséa THC One Step Marijuana Test Strip
- Abbott Diagnostics Scarborough Inc NMP22 Bladder Chek Test (prescription home test & professional use tests available)

The Joint Commission is reviewing accreditation requirements above & beyond CMS Conditions of Participa-

tion. As a result of the review, 56 Hospital Elements of Performance (EP's) were identified for deletion & 4 for minor revisions to make them more effective.

Out of the 2022 25 data breaches involving 500,000 or more records, 52% occurred at business associates (BA), including 60% of the of the 10 largest data breaches. The 12 largest HIPAA affected almost 22.66M patients & health plan members. The number of BA breaches is notable.

Fun Spot

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"My school holiday concert has been cancelled. Frosty the Snowman has the same name as a drug dealer, Rudolph is a victim of bullying, Jingle Bells denies global warming and White Christmas is racist."

November Puzzle Answer:

Your legs

December Puzzle:

What's special about the words job, polish, & herb?

Trivia:

- The red blooms on poinsettias are not flowers, but bracts which are modified leaves. The actual poinsettia bloom is a yellow bloom found in the center of the bracts.
- There are 100 different poinsettia colors.
- The color of the poinsettia leaves

involves light it gets; red leaves need bright light during the day & pitch black at night (at least 12 hours).

- Hanukkah is an 8 day Jewish celebration commemorating the rededication during the 2nd. century of the 2nd. Temple of Jerusalem, the Holy Temple, at the time of the Macabean revolt against the Seleucid Empire.
- Lighting the menorah honors the miracle of the rededication of the Second Temple.
- A dreidel-4-sided spinning top w/an inscription of Hebrew letters around the sides & letters signify a great miracle happened here.