

What's Your Compliance IQ?

Volume 5 Issue 9 September, 2022

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HIPAA News

The HHS OCR has a settlement over the improper disposal of PHI. The company involved has agreed to pay \$300,640 to the OCR & to implement a corrective action plan to resolve this investigation.

The company filed a breach report in May, 2021 stating empty specimen containers with PHI were placed in a garbage bin in their parking lot. The OCR investigation found potential HIPAA Privacy Rule violations.

For the third consecutive month the number of healthcare data breaches fell with 49 breaches of 500 or more records reported; there were 58 the previous month.

Eighteen breaches of 10,000 or more records were included. Hacking incidents continue to be the ma-

ior problem with ransomware often used in the attacks.

There has been a growing trend for attackers to conduct data theft & extortion attacks without using ransomware. Healthcare organizations are vulnerable to email attacks with phishing attacks a common cause of data breaches. There has also been an increase in the use of reverse proxies in attacks which allows credential stealing & multifactor authentication to be bypassed to gain access to Microsoft 365 environments.

There was one HIPAA enforcement activity in August & it involved improper disposal of the PHI of 58,106 patients. In addition to not rendering it unreadable, it was determined there was a failure to maintain proper administrative safeguards. The improper disposal of specimen containers

with patient labels spanned from 2011 to 2021. A penalty of \$300,640 was paid.

If a HIPAA complaint is filed, whether justified or not, what happens depends on the nature of the complaint. An entity's Notice of Privacy Practices notes how PHI can be used or disclosed & how complaints can be filed.

Healthcare providers & health plans are aware if a complaint response is not adequate or timely, they have the right to escalate it to the HHS Office of Civil rights or the state Attorney General. It HHS OCR receives the complaint it decides if it has the authority to investigate it. If so, the entity will be contacted to try to resolve the issue informally first. The process is about the same when it goes to the state Attorney General.

Compliance News

Effective 8-31-22, all entities are required to use the ABN labeled with the appropriate federal OMB # (0938-0566) & CMS-R-13 to ensure Medicare beneficiaries can be billed for any lab test or other services not covered by Medicare. The renewed form contains no substantive changes from the previous version with ONE exception: the expiration date on the bottom is June 23, 2023. As of this date, only ABNs carrying this expiration date will be recognized as valid.

Use of standing orders has been problematic in the past for compliance & documentation requirements. Along w/justifying the original order, there must be clinical information in the patient's chart to support the continuing need for the test over the specified time. Orders

should not be standing beyond 12 months & it is suggested labs should verify the continued need for the test or service every quarter.

Labs should have a policy defining which tests are eligible for standing orders & how those ordered will be tracked & monitored for compliance.

The American Data Privacy & Protection Act (ADPPA) is awaiting a House vote with doubts about its passage. One of the biggest issues is the preemption of state laws. HIPAA preempts state laws but it sets minimum standards for healthcare data & security and states are able to implement their own laws that go further than HIPAA.

The ADPPA gives consumers greater power over how personal data is col-

lected & used including opting out of collecting & sharing data

Most states have 3 types of subpoenas per medical records:

- Witness—requires entity to appear in court to give evidence
- Disposition—requires entity to provide copies of records &/or attend a disposition hearing
- Subpoena *duces tecum*—requires entity to provide copies of records &/or attend a court hearing

All three types can be used to subpoena medical records or require the entity to answer questions/testify about a medical record.

A subpoena requires compliance with the Minimum necessary Standard & any state law more stringent than HIPAA.

Safety

To strengthen enforcement & improve compliance with workplace safety standards, the criteria for placement in the OSHA Severe Violator Enforcement Program have expanded; new criteria include violations of all hazards & OSHA Standards & will continue to focus on repeat offenders in all industries.

This program empowers OSHA to sharpen its focus on employers who either willfully or repeatedly violate federal health & safety laws or demonstrate a refusal to correct previous violations & those on the list are subject to repeat inspections.

Laboratories must be aware of local laws concerning used PPE—do these require all PPE to be disposed of in regulated medical waste containers; if that is required, then all PPE, even if not visibly soiled with blood or body fluids, must go into those regulated containers.

Any associate signing a waste manifest must have had DOT Hazardous Material Training because signing the document indicates an understanding of the contents, the hazards, & the proper disposal regulations.

OSHA's Electrical Standard says electrical switchboards with live parts be covered a dead front accessible

only to qualified persons; i.e, they should be locked.

Vendors & service representatives should wear PPE in work areas. Those bringing their own lab coats cannot use them unless they are disposable since used PPE cannot be removed from the laboratory.

A well-ventilated storage area is sufficient for formaldehyde storage since the containers are not being used/opened in that area. If it is used in the storage area, the best way to check for adequate ventilation is to perform badge monitors.

If readings are high for pouring, this task must be done in a fume hood.

Miscellaneous

A Texas lab has agreed to settle a case filed by a whistleblower pathologist alleging false billing to Medicare for medically unnecessary additional tests on biopsy specimens.

Between 2013-18, this lab automatically & routinely did additional tests on biopsy specimens prior to review of results by a pathologist. The lab agreed to settle for \$16M.

A recent study has revealed more

than 20% of healthcare organizations experienced an increase in mortality rate after a significant cyberattack & more than half of the respondents also reported poorer patient outcomes with the most common reason being delays to procedures/tests. Almost half also reported an increase in medical complications.

Studies have shown there is a correlation between the worst types of cyberattacks & adverse patient out-

comes & adverse patient outcomes but did not prove causation.

The Joint Commission is beginning a review of CMS' "above & beyond" requirements that go beyond the Conditions of Participation that are not on crosswalks to them.

There is a warning about a Monkeypox phishing campaign attempting to steal Outlook, Office 365, & other email credentials. Beward!!

Fun Spot



"Look at the bright side. Bad credit is your best protection against identity theft."

August Puzzle Answer:

A candle

September Puzzle:

A cowboy rides into town on Friday, stays 3 days, then leaves on Friday. How did he do that?

Trivia:

- In Ukraine there is a 1000 ft. deep salt mine used to treat respiratory ailments. There is substantially less bacteria in the air than in the most sterile room in a hospital.
- If every muscle in the body could pull in one direction, you could lift almost 25 tons.

- Goosebumps are meant to ward off predators.
- The hottest spot on the planet is Libya.
- The English word with the most definitions is "set."
- Chewing gum boosts concentration.
- Volcán, Panama is the healthiest place to live.
- Pringles are not potato chips, but rather dehydrated potato flakes pressed into their signature shape.
- Koalas have fingerprints.
- There are more stars in space than grains on every beach in the world.