

# What's Your Compliance IQ?

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## HIPAA News

Losses to phishing attacks increased by 76% last year with almost 1/3 of companies losing money to successful attacks. More than 4 of 5 organizations surveyed experienced at least one successful attack.

Phishing is usually associated with email but 2022 saw a marked increase in telephone-oriented attack delivery (TOAD). These attacks typically involve emails urging the recipient to call a customer service hotline to resolve a security or account issue. Call centers convince victims to install remote software, malware, or instruct them to transfer money.

Teaching associates how to recognize these threats can significantly improve security.

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Trinity Health in MI has reported a

1-5-23 phishing attack on a single e-mail account that affected 43,450 accounts

Beaver Medical Group in CA had a single associate email compromised by responding to a phishing email affecting 1190 individuals.

Takeaway from these incidents: be careful what you click on or it could result in exposure of PHI.

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There were 43 breaches of 500 or more records in February, '23 well below the 12-month average of 57.4. A single breach of 3.3M records increased the number of monthly breached records. Hacking & other IT incidents accounted for 76.7%.

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A FBI report shows at least \$10.3B was lost to cybercrime in '22, up 49% from '21 with healthcare the top sec-

tor targeted. Several cybercriminal groups have switched to extortion-only attacks involving data theft & ransom demands but no file encryption (1 of 10 attacks in last half of '21 through all of '22). Phishing attacks remain one of the most common vectors despite falling by 7% from last year ('21).

Gangs upload data of 7 victims/day to their data leak sites & it is becoming increasingly common for gangs to harass victims with 20% of these incidents involving it.

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HHS has restructured the OCR & created new divisions to help improve HIPAA enforcement & civil rights laws as well as clear the current backlog of complaints & investigations. Despite increases in case-load & breaches, appropriations have not risen & action was needed.

## Compliance News

The Public Health Emergency (PHE) is scheduled to end May 11. Republicans, however, do not want to wait that long & have introduced the Pandemic Is Over Act that would end the PHI immediately on passage. This would disrupt Congress' plan for an "orderly wind-down" of the special rules in place providing extra state funding to prevent disruption of Medicaid coverage during the pandemic.

Passage would end the "blanket waivers" allowing providers to focus on patients rather than compliance; the Anti-Kickback Statute & the Stark Law would revert to pre-pandemic rules, & labs will have to revisit their billing practices that loosened Medicare coverage & billing rules.

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The May 11 PHE end will not necessarily end EUAs for new COVID-19 products. HHS will notify the public before terminating an EUA declaration by publishing a notice in the Federal Register which will trigger a reasonable period for transition.

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There are significant differences between EKRA (Eliminating Kickbacks in Recovery Act of 2018) & the Stark & Anti-Kickback Statute (AKS). The latter two affect only federal health programs & EKRA is an all-payor law even applying to referrals of patients with private insurance. Almost none of the AKS/Stark safe harbors & exceptions apply to EKRA. EKRA casts doubts on 3 common arrangements to qualify under AKS/Stark. They are:

- Variable compensation packages for sales staff based on va-

lue or volume of generated referrals

- Leasing space in referring doctors' offices
- Participation of Accountable Care Organizations (ACOs)

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A physician office in MI has entered into an agreement regarding an alleged civil rights violation. A deaf patient alleged the office refused repeated requests for a sign language interpreter for a preoperative appointment; the patient further alleged the office retaliated by cancelling the appointment & terminating her as a patient.

Federal civil rights laws are clear health care providers must provide deaf patients an interpreter or other auxiliary aid when requested. Care must be free from discrimination.

# Safety

Regulations regarding spill supplies are vague but labs must have adequate materials on hand for the chemicals stored. If there are chemicals in the lab, spill kits need to be accessible nearby & appropriate signage in place.

Neutralizers should also be present for those items like formaldehyde requiring neutralization prior to cleanup. Staff should be fully educated about the supplies, use, etc. & spill drills are helpful for this.

ANSI & OSHA both require a safety shower be within 55 feet or 10 seconds travel distance from the hazard. There can be no obstructions between the hazard & the shower (e.g, a door opening toward

you approaching the shower).  
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If CAP PT notebooks are kept in the lab, best practice is not to remove them even for review. Inspectors should use PPE & remain in the lab with the notebooks as well.

Fit testing for N95 masks should be resumed now that the pandemic is behind us. The bitter solution has been on backorder, but OSHA has approved qualitative fit testing methods if supplies are unavailable:  
<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6558090/>  
<https://www.osha.gov/laws-regs/regulations/standardnumber/1910/1910.134AppA>

One common error made by field

service representatives has to do with PPE; not all vendors provide PPE education so lab staff must be sure they wear PPE & gloves when working in the lab. Face protection should be offered when instruments have to be opened for repair or diagnostics. Be sure the rep does not bring a lab coat to wear as this is an OSHA violation; provide one.

Use of cell phones or computers is another safety issue w/ reps. Lab phones should be used &, if the computer has to be used w/the instrument, it should be decontaminated before leaving the lab. If a new instrument generates a new waste stream, the lab must ensure all waste regulations are followed. Reps must follow lab safety rules.

# Miscellaneous

A bill has been introduced to prevent companies from disclosing identifiable health data for advertising purposes fueled by the recent GoodRx & BetterHelp disclosures to social media & big tech firms after clients were told information would remain private. The bill is not yet bi-partisan.

The personal information of lawmakers & staff has been stolen in a cyberattack on the health insurance marketplace.

On 3-22-23, CMS started sending electronic certificates to labs opting on their applications (Form CMS-116) to receive e-mail notifications. These labs will get a link to their CLIA certificates which can be printed out.

If a lab has not opted in for this, it must give written notification to their state agency. Labs will also continue to get paper certificates until further notice.

A recent OIG report indicates Medicare spending declined during the pandemic by about 16%, tests by about 15% & beneficiaries tested declined by about 9%.

AABB will resume unannounced assessments 5-12-23 at the end of the PHE using processes & procedures in place prior to the PHE. This change allows AABB to comply with U.S. Federal regulations pertaining to deemed providers of lab assessment & accreditation services.

# Fun Spot



### February Puzzle Answer:

Stop-all words are anagrams of each other.

### March Puzzle:

What is harder to catch the faster you run?

### Trivia:

- Wyoming Territory was the first place to give women the right to vote (1869)
- All American women could not vote until 1965 when President Johnson signed the Voting Rights Act.
- Women could not get their own credit cards until 1974 when the Equal Credit Opportunity Act (more formally known as Title

VII) finally passed Congress.

- The 1963 Equal Pay Act was the first federal legislation to prohibit sex-based discrimination.
- Aretha Franklin was the first woman to be inducted into the Rock & Roll Hall of Fame.
- Wilma Mankiller became the first Cherokee Nation principal Chief.
- Carol Moseley Braun was the first woman elected to the U.S. Senate.
- Actress Hedy Lamarr is credited with inventing the technology behind wi-fi.
- Oprah Winfrey was the first