STARTING GATE

Volume 10 • Issue 51 Week of December 23, 2013

QUALITY — HIPAA

December 23, 2013

Pillars of Success

- PEOPLE
- SERVICE
- QUALITY
- FINANCE
- GROWTH

Breach, HIPAA and Protected Health Information

This week, we look at the rules governing HIPAA, the "HITECH" Act and HIPAA Omnibus Rule.

Unsecured PHI means Protected Health Information that is NOT MADE:

- Unusable
- Unreadable
- Indecipherable

to unauthorized persons through technology or methodology specified by the secretary of the U.S. Department of Health and Human Services.

Breach is the acquisition, access, use or disclosure of PHI in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the protected health information.

Breach is limited to:

- Protected Health Information
- Individually identifiable health information
- Transmitted or maintained in any form or medium, including electronic information

Suspected Breach of PHI?

- Always notify UNMHSC Privacy Office: (505) 272-1493

Suspected Breach of Information Technology Systems?

- UNMH IT Security: (505) 272-5657
- UNMHSC Information Security: (505) 272-1696

> "Treat your password like your toothbrush. Don't let anyone else use it and get a new one every six months."
>
> ~ *Clifford Stoll*

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Breach of PHI and Regulation

The following instances require “Breach Notification”:

- Unauthorized acquisition, access, use or disclosure of PHI (unauthorized means impermissible use or disclosure under Privacy rule) AND
- Acquisition, Access, Use or Disclosure that violates HIPAA Privacy Rule; AND;
- Compromises the security or privacy of the PHI (and compromise is not deemed “low”)

Regulatory Exceptions to Breach Notification:

- Unintentional acquisition, access or use of PHI by an employee acting in good faith and within the scope of employment or professional relationship;
- Inadvertent disclosure of PHI from a person authorized to access PHI to another person authorized to access PHI but without the other person having a need to know that specific PHI;
- Unauthorized person to whom the PHI is disclosed would not reasonably have been able to retain the information (good faith belief).

Suspected Breach of PHI?

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“Prepare and prevent, don’t repair and repent.”
~ *Author Unknown*

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Regulation and HHS Guidance

There are two technologies and methodologies specified in HHS regulation that render PHI secure:

- Encryption
- Destruction

(http://www.hhs.gov/ocr/privacy/)

Regulation includes forms and types of information and protocols subject to rendering PHI as secure:

- “Data in Motion” - includes data moving through a network, including wireless transmission, whether by email or structured electronic interchange;
- “Data at Rest” - includes data that resides in databases, file systems, flash drives, memory and other structured storage method;
- “Data in Use” - includes data in the process of being created, retrieved, updated or deleted;
- “Data Disposed” - includes discarded paper records or recycled electronic media.

Suspected Breach of PHI?

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Suspected Breach of Information Technology Systems?

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- UNMHSC Information Security: (505) 272-1696

“Carelessness doesn’t bounce; it shatters.”
~ *Terri Guillemetes*

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Breach Notification Requirements

Data breach notification applies to HIPAA covered entities and their business associates who:

- Access, maintain, retain, modify, record, story, destroy or
- Otherwise hold, use or disclose unsecured PHI

Notification also applies to breach of "unsecured PHI."

When a breach is discovered, the covered entity must notify each individual whose unsecured PHI has been or is reasonably believed to have been inappropriately acquired, accessed, used or disclosed.

The notification must occur:

- Without unreasonable delay;
- No later than 60 days after discovery of the breach; *EXCEPT*
- When a law enforcement official determines that notification will impede a criminal investigation or cause damage to national security.

Suspected Breach of PHI?

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Suspected Breach of Information Technology Systems?

- UNMH IT Security: (505) 272-5657
- UNMHSC Information Security: (505) 272-1696

"Safety is as simple as ABC: Always Be Careful."
~ Author Unknown

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Methods of Breach Notification

Written notice to individual or next of kin must be made to the:

- Last known address;
- Delivered by First class mail; and
- Can be delivered by electronic mail if individual-specified.

The notification should have the following:

- What happened;
- Date of the breach;
- Date of discovery of the breach, if known;
- Description of the type of unsecured PHI.
- Steps the individual should take to protect themselves from potential harm;
- Description of the covered entity investigation, mitigation, protection against reoccurrence; and
- Contact procedures, including a toll-free phone number, email address, web site and postal address.

Suspected Breach of PHI?

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Suspected Breach of Information Technology Systems?

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- UNMHSC Information Security: (505) 272-1696

"Precaution is better than cure."
~ Edward Coke