

What's Your Compliance IQ?

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HIPAA News

DHH OCR has completed an analysis of breach reports & found outpatient facilities & specialty clinics were more frequently targeted than hospitals in the first 6 months of 2021. Smaller healthcare organizations tend to have weaker security defenses & can be attacked more easily.

PHI is worth more than credit card or Social Security numbers & can be monetized in a myriad of ways.

Healthcare breaches are occurring at almost twice the level as in 2018. Data breaches caused by breaches or IT incidents are occurring at about 3 times the rate as in the first 6 months of 2018. There has also been a major increase of the number of cyberattacks on Business Associates which now account for 43% of all reported healthcare data breaches. Attacks are profitable &

unlikely to stop.

A Children's Hospital & Medical Center parent filed an OCR complaint alleging the facility failed to provide her with timely access to her minor daughter's medical records. Some records were provided but not all records following several follow up requests.

The facility has agreed to corrective actions & an \$80,000 payment to settle a potential HIPAA Privacy Rule right to access standard. Action in an access request is required within 30 days of the request.

An AZ family medicine clinic is notifying 35,000 patients of compromised PHI data from a ransomware attack in May, 2021. All data had been backed up prior to the attack, but in addition to encrypting files, the

the attacker corrupted backup files meaning all EHR data prior to 5-21 could not be recovered. No evidence of any misuse or exfiltration of data has been found during the investigation but theft could not totally be ruled out.

Jackson Health is investigating a nurse social media HIPAA violation after photographs of a baby w/a birth defect were posted on Facebook. Posting photos even on closed Facebook groups is a violation without prior patient authorization.

Breaches in August had a 44% decrease in the number of reported data breaches month-over-month. There were 38 breaches of 500 or more records & 5,120,289 were breached. This is well above the 12 month average of 3.94M/month. Two major ransomware attacks compromised 2.8M records combined.

Compliance News

The two previous audits of Medicare administrative contractor (MAC) payments for phlebotomy travel allowances determined MAC's paid providers allowances not in compliance w/Medicare guidance.

CMS needs to issue regulations related to phlebotomy travel allowances to clarify provider guidance related to prorating mileage on claims for travel or issue further guidance. These audits indicated overpayment by 93 of 202 sampled paid claim lines reviewed complies & 109 did not.

While the Public Health Emergency (PHE) is still in effect, the leniency the FDA has displayed toward COVID-19 tests has been replaced with a more business-as-usual approach. The development of a ro-

bust pipeline of tests obviates the need for flexibility & a return to normal review procedures & standards will occur as soon as conditions permit.

The Department of Justice (DOJ) ordered U.S. attorneys to aggressively seek dismissal of False Claims Act (FCA) Whistleblower *Qui Tam* lawsuits lacking merit or do not serve the government's interests. The DOJ has 7 grounds for seeking dismissal:

- Meritless claim
- Parasitic or Opportunistic Claim-duplicates existing investigations & are duplicative
- Threats to a government agency's policies or programs
- Interferes w/other FCA cases
- Threatens harm to national security-could compromise classified information
- Costs will exceed gain

- Claim may frustrate an investigation-i.e., the government's effort to conduct an investigation

A pass-through scheme for blood & toxicology tests billed from a small rural hospital in MO has resulted in a lawsuit by BC/BS against persons & entities involved. The testing labs contested having as no association with the hospital since they did not identify it in the billing. The court did not accept that noting the labs did use the hospital NPI & Tax ID numbers to bill claims on behalf of patients w/no connection with the hospital. That was enough to establish the connection needed to prove liability.

1 in 3 Americans have attempted to guess a password & 75% have succeeded.

Safety

The Biden-Harris Administration is going to require COVID-19 vaccination of all staff within all Medicare & Medicaid certified facilities to protect both them & patients. Healthcare facilities across the country should make efforts to get staff vaccinated to be sure they are compliant when this is effective.

The announcement for this requirement for nursing home staffs will be expanded to include hospitals, dialysis centers, ambulatory surgery centers & home health agencies among others as a condition of program participation. An interim Final Rule with comments will be issued in October.

A pneumatic tube system must be validated for laboratory sample transport; tubes should have the foam inserts when validation is done.

The OSHA Bloodborne Pathogen Standard requires both risk & task assessments per job code &/or title. These should be have an annual review & update.

Diluted bleach should be labeled, at a minimum, with chemical identity, hazard warning (NFPA or HMIS warning labels or GHS Pictogram) & the expiration date.

Using cell phones in the lab is pro-

hibited by CLSI guidelines. Also, published incidents of lab-acquired infections were linked to pens, cell phones, & other lab fomites. Enough lab associates contracted *Salmonella* in these cases across the country that the CDC had to investigate & report them.

Fluid resistant gowns or lab coats are required whenever a procedure may be reasonably anticipated to splash blood or other potentially infectious materials. Protection is the first & foremost consideration. Comfort is another consideration-if the fabric meets the protection requirements, more lightweight & breathable fabrics should be considered.

Miscellaneous

Detection of an increasing number of new COVID-19 variants raises the possibility a new strain might emerge bringing new problems for managing the pandemic. Public health officials & clinical laboratory scientists are on alert to determine if any new variant is more virulent or more easily transmissible.

The flu vaccine changes every year because of the virus' ability to recombine into variants that can evade immunity. The COVID-19 vi-

rus has to replicate to mutate but each virus does not get as many opportunities thanks to natural immunity, vaccines, & treatments shortening the infection.

Personal data of patients getting COVID-19 tests at Walgreen's has been exposed on the Internet due to test registration vulnerabilities; the number of patients could be in the millions. It is unclear when the vulnerabilities were introduced.

Interesting research at the University of Colorado ATLAS Institute is looking at prototypes of permanent tattoos with a biomedical purpose. They have developed an intradermal ultraviolet radiometer that provides naked eye feedback about UV exposure in real time. Strong evidence indicates they can be engineered to change colors & sense & convey medical information. Previous studies have shown these tattoos can pick up changes in Glucose, Na, Lytes or pH in animal models. Tattoos semi-permanent.

Fun Spot

Sometimes the thoughts in my head get bored and stroll out through my mouth. This is never a good thing.



August Puzzle Answer: take 1st. letter of each word, place it at the end & it will spell the same word backwards.

September Puzzle: What has 6 faces & does not wear makeup & has 21 eyes but cannot see?

Trivia:

- It takes more calories to eat a piece of celery than it has in it to begin with; same w/apples.
- Coconut water can be used as blood plasma.
- Saturn's density is low enough to float in water.
- On Jupiter & Saturn it rains diamonds.

- A single cloud can weigh more than 1M pounds.
- Cotton candy was invented by a dentist.
- During WWII, people were encouraged to save bacon fat & give it to the Army to make bombs—it is high in glycerine.
- LA has the highest number of alligators in the U.S.
- The red food dye for Skittles is made from boiled beetles.
- All Fruit Loops are the same flavor.
- Raw lima beans have a lethal amount of cyanide in them; cooking, however, makes