

# What's Your Compliance IQ?

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## HIPAA News

A new report indicates almost half of healthcare data breaches are from ransomware & the majority of the attacks were preventable. During the first 10 months of 2020, 8M healthcare records were exposed. Healthcare accounted for almost 25% of the breaches across all industries in this time period.

The 2 most common vulnerabilities exploited had patches released in early 2020 to correct them. Some organizations have been slow to apply the patches when issued.

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While ransomware continues to pummel organizations, fewer victims have been paying a ransom, & when they do, they are paying less than before. From Q3 to Q4 last year, payment declined by 34% & the median ransom payment dropped 55%. The decrease in the

number willing to pay a ransom is tied back to data-stealing attackers failing to keep promises.

A new trend is to have systems irrevocably wiped w/out any potential for getting a decryption tool. This is unusual because there is no way for the attackers to monetize anything.

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A MA health center discovered an associate email account was accessed by an unauthorized individual following a phishing email. With investigative help, it was found that 4 email accounts had been compromised. A review of these accounts indicated PHI had been contained; no data being stolen or misused has been found to date but potentially 1800 patients were affected.

Another system email breach has resulted in patients being notified of

the potential access of their PHI. These incidents point to what type of issues might occur from such events.

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There were just 32 breaches of 500 or more records in January, down 48% from the 62 in December, 2020. This number, however, is still more than one per day. One Florida breach affected more than 3.5M people; it was caused by a business associate failing to apply patches for 7 years.

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The Office of Civil Rights (OCR) has lifted HIPAA fines for use of COVID-19 vaccine scheduling tools. The enforcement discretion applies to both covered entities & their business associates. This also includes online & web-based scheduling applications. OCR is encouraging reasonable safeguards.

## Compliance News

The statement that what associates do when away from work is none of the company's business is a myth. The truth is off-duty conduct may be grounds for discipline when it damages the business, such as hurting its reputation that renders the associate ineffective and/or making other associates unwilling to work with him/her.

Case law has not caught up with actions that might be in question during the pandemic; companies should develop policies for associates to social distance, mask & other COVID-19 public health guidelines not only at work but when off site and off duty. It should also require associates to self-report off duty or on duty conduct violating these guidelines prior to the next scheduled shift. Finally, associates

should be required to report violations witnessed or known about without fear of retaliation.

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More transparency & accountability regarding diversity, equity, & inclusion (DEI) is expected in 2021.

A more comprehensive approach to DEI that includes HR, Ethics, Legal & Compliance teams are forecast. Increased transparency, leadership buy in with more accountability & enforcement is also expected.

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One of the most critical takeaways from the events of 2020 is the fragility of the supply chain for many businesses as well as the national emergency response. Companies need a supplier risk management plan. This stability of the supply chain is intertwined with compliance.

How? Supply chain issues affect a company's reputation just as bribery and/or corruption in the supply chain.

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Organizations now recognize how critical compliance education is & with increased regulatory scrutiny these programs are being recognized as an area of excellence & not just a task to be completed.

It is predicted associates may be resistant & push back against education on current division issues such as getting a COVID-19 vaccine or diversity education.

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Whistleblowers will have elevated status in 2021. Expect record numbers of claims processed to include increased numbers of awards amounts.

# Safety

According to the 2020 OSHA report, it did 300 COVID-19 inspections out of the average total of 32,000 annual inspections indicating to many the priority of the COVID-19 inspections.

Inspection totals as well as the fines levied support the contention OSHA has been less than vigorous in its efforts to enforce COVID-19-related safety rules in the workplace.

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OSHA requires eye protection when handling open specimens or chemicals. Goggles, face shields, or counter shields are acceptable protection.

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Activated charcoal fume filters from a Histology Coverslipper must be disposed of by the contracted lab chemical waste vendor.

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If a Biological Safety Cabinet is moved, even if only a couple of inches, it must be recertified.

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There are no regulations requiring disinfection of a phlebotomy chair after every use.

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There is no standard requiring culture of an eyewash station, but it is a best practice. If cultured, any count >100 cfu/mL would require decontamination of the lines.

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If there have been no associate ex-

posures for a particular reagent or chemical, the SDS can be discarded when you no longer have the chemical. If, however, there was an associate incident with a chemical, OSHA requires that the SDS be kept for 30 years. Electronic access to the SDS is acceptable.

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OSHA's Chemical Hygiene Standard requires a lab with a fume hood to have a function verification program. This includes grossing station hoods. Annual checks by a certified vendor are recommended.

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OSHA has recommended an update to the Hazard Communication Standard including amended requirements for labels & SDSs.

# Miscellaneous

With a nod the pandemic will likely last through '21, HHS has said it will give 60 days' notice before ending the Public Health Emergency. Blanket waivers of certain Medicare Conditions of Participation & Coverage will no longer be in effect; it will provide that amount of time to come back into compliance.

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CMS is still unhappy with accrediting organization (AO) performance & wants them to get even

tougher on problems after yet another critical CMS report to Congress about the agency's oversight of AOs. Expect AOs to get tougher on problems found within the physical environment.

CMS also expressed concerns again about missed findings under Infection Control & Governing Body *Conditions of Participation (CoP)*. The end result may be AOs escalate more findings to condition level deficiencies. The agency critique was largely based on dis-

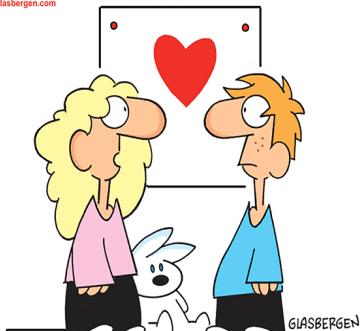
parities between AO surveys & those identified by CMS state surveyors weeks later.

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Until at least March 22, CMS is continuing to limit its onsite hospital surveys except those involving complaints of immediate jeopardy to patients or in cases where patients are considered to be in eminent danger. The Joint Commission has paused surveys through the end of May; remote surveys will be done for those sites eligible for that type of survey.

# Fun Spot

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"Valentine's Day is the holiday where men give presents to the woman they love to make up for the way they screwed up at Christmas."

## January Puzzle Answer: Letter "M"

### February Puzzle:

I am taken from a mine, shut up in a wooden case from which I am never released & yet I am used by everybody. What am I?

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- Inoculation was introduced to America by a slave, Onesimus. He told about a centuries old African practice—extracting material from an infected person & scratching it into a non-infected person deliberately introducing Smallpox to a healthy person

making him/her immune.

- The iconic character, Betty Boop, was inspired by a Black jazz singer in Harlem, Esther Jones, who performed regularly at the Cotton Club in the 1920's known as Baby Esther.
- Supreme Court Justice Thurgood Marshall, said he was punished in school by being forced to recite the Constitution ultimately memorizing it.
- African American slaves were allowed to play card games because it helped them with their counting skills; Bridge, Bid Whist, & Spades evolved from them.