

What's Your Compliance IQ?

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HIPAA News

Organizations are becoming more opaque about the cause of data breaches which is concerning. A sudden lack of transparency of the content in data breach notices has created risk for victims. The reason for this change is not known. Multiple lawsuits are now commonly filed in response to a breach w/in days of the notification letters.

Many courts have ruled to dismiss lawsuits due to lack of evidence of harm in many states. Suits for increased risk of future harm due to personal data exposure is not possible in many states & could be a reason for entities breached being reluctant to disclose detailed information as it could be used in a lawsuit against the company. Federal law requiring notifications about data breaches are not being actively enforced in their current form.

Cybercriminals are increasingly targeting the healthcare organization supply chain in attacks as these are usually the weakest links in the security chain. Organizations typically contract with many different vendors which are often provided with sensitive data or privileged access to healthcare networks. In 2022, business associate data breaches outnumbered those at healthcare providers. Assessing & managing supply chain risk is now one of the biggest cybersecurity challenges in healthcare. Organizations typically use 10^{3rd}. party vendors & indirect relationships with 60-90x the number of 4th. parties. While this security is challenging, the 1st. step is to gain visibility into your entire vendor ecosystem to accurately assess risk & make informed decisions.

Two LA health systems are being sued over the use of pixels on their websites

impermissibly disclosing patient data to third parties such as Facebook & Instagram. The New Orleans based LCMC Health System & Shreveport based Willis-Knighton Health System were named.

The lawsuit alleges Metal Pixel code was added to their websites allowing sensitive personal data & PHI to be captured. HHS OCR recently confirmed the use of tracking technologies on websites without a Business Associate Agreement or patient authorization violates HIPAA.

The violation has probably been going on for years. The transfer of this type data without website user authorization may have been used to serve targeted advertisements related to medical conditions disclosed via the sites gathering information from such interactions patient appointment scheduling.

Compliance News

COVID-19 testing fraud & abuse is emerging as a priority for federal enforcement efforts. To ensure compliance, labs should:

- Have documentation the treatment provider ordered all tests performed; each test must be listed & no "run labs" or "check respiratory" is inadequate.
- Patient medical record must indicate medical necessity of COVID-19 testing.
- Must have medical necessity documentation for any additional test(s) ordered with the COVID-19 test-should not be bundled or in prepackaged panels.
- Must have documentation each test result actually used by the provider for diagnosing/treating the patient.

The lab has just over 3 months to transition compliance programs to business as it was before the Public Health Emergency (PHE).

Of particular concern is the blanket waivers revocation that temporarily relaxed the Anti-Kickback Statute & the Stark Law restrictions. Laboratories must look at the COVID-19 testing done under the relaxed rules & make the required changes to pre-PHE business processes.

The PHE end, however, will not necessarily end EUAs for new COVID-19 products. If HHS declares an end to the COVID-19 declaration, all EUAs issued under the declaration will cease to be in effect on that date. If the declaration ends, HHS will have to publish a notice in the

Federal Register to notify the public. This will trigger a transition that must last for a reasonable period to allow for "proper depositioning."

There are no specific HIPAA compliance rules for social media but organizations subject to HIPAA & their workforces must take care how social media is used to avoid HIPAA violations & the Federal Trade Commission Act (FTC).

Providers can promote healthy lifestyles, raise awareness of emerging health issues, & make announcements when special clinics or services are available to the public. FTC social media rules are regulations related to deceptive acts or practices applying to all forms of advertising & marketing. Be reminded posts on a private account are double violations.

Safety

Dry ice education is required by CAP; this should include any associate who may come into contact with it. Staff must know the PPE required to handle it—insulated gloves, the use of tongs or a scoop & face protection are required when scooping it from a container.

Couriers should carry no more than 3 lbs. in a vehicle & there should always be adequate ventilation in the car including open windows. Dry ice converts quickly from a solid state to a gas & that gas rapidly displaces oxygen in the air making it difficult to breathe or stay conscious. High volumes of dry ice in a car can create a deadly

road situation very quickly.

Transport of pathology specimens in a car also has safety implications. If a specimen lid should not be secure & formalin begins to spill out into the cooler/container, this can create a formalin exposure—symptoms can include nausea; any courier should be alert to this possibility should he/she begin to feel nauseated—it would be good practice to check for a formalin leak especially if there is any formalin odor in the car.

OSHA **requires** a biohazard label on any lab refrigerator that will ever contain biohazardous material. In a lab handling flammable materials every refrigerator & freezer must be

labeled per its capacity to store flammables. If it is explosion-proof, it should say so on the label. If it is not, it needs a label stating flammables cannot be stored in it.

Remember: vinyl gloves are not considered protective against biohazard materials or chemicals.

Texas has adopted the International Fire Code (2018), **so self-closing doors on flammable cabinets are now required there.**

There is no benchmark for PPE compliance because the expectation is 100%. Labs need enforcement & accountability to ensure associates comply with PPE requirements. Lack of compliance cannot be ignored.

Miscellaneous

As 2021 ended, Congress delayed PAMA cuts but did nothing to address the fundamental PAMA problems identified by MedPAC.

The bipartisan SALSA bill proposed in 2022 was supported by the lab industry who lobbied hard for its passage but it was not included in the spending bill passed; the spending bill did provide 1 more year of PAMA price cuts & reporting. There is hope a SALSA-like solution will pass in 2023

The COVID-19 public health emergency (PHE) is set to end May11, 2023. An advanced announcement is being made to allow entities to re-educate associates & implement new billing processes.

This end will also allow states to again start eligibility status of Medicaid enrollee—many may no longer qualify for coverage.

January is usually one of the quietest

months for healthcare violations. January, '23 was no exception. There were 40 breaches of 500 or more persons reported to the OCR. This is well below the 53 reported in January, '22 & 12-month average of 58. Just over half of the January, '23 breaches were due to hacking/IT incidents the majority involving hacked network servers. There was an increase in the number of unauthorized access/disclosure incidents. There were 2 reported theft incidents—one of stolen paper records & one involving a stolen electronic portable device.

Fun Spot



January Puzzle Answer:

A Keyboard

February Puzzle:

Name the next word in the following sequence: stops, tops, pots, opts.

Trivia:

- February is the only month where it is possible to go the entire time without having a full moon.
- Statistically, February is among the most frequently misspelled words in the English language, with the "r" often overlooked.
- Martin Luther King, Jr. was a freshman at Morehouse College at the age of 15.
- In 1920, Fritz Pollard & Bobby Marshall became the first black

athletes to play in the NFL.

- While Rosa Parks is credited with helping spark the civil rights movement, Claudette Colvin was arrested 9 mo. prior to Parks' not giving up her seat on the bus for not giving up her bus seat to white passengers.
- Madam C.J. Walker was born on a LA cotton plantation & became wealthy by creating a line of African-American hair products.
- Josephine Baker expatriated to France & smuggled intelligence to French allies pinned inside her dresses & hidden in her sheet music during the war.