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HHS Announces HIPAA Enforcement Action

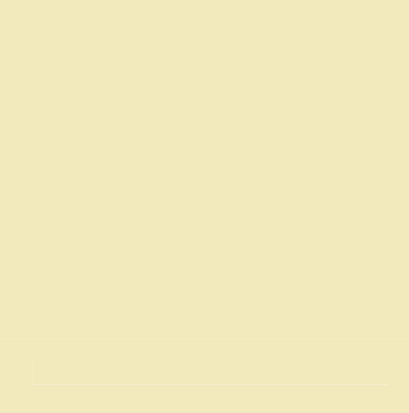
On July 17, 2008, the United States Department of Health and Human Services ("HHS") announced a first-of-its-kind enforcement action under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In a press release, HHS announced that it had entered into a Resolution Agreement with Providence Health & Services, a Seattle-based multi-state health system ("Providence"). Pursuant to the Resolution Agreement, Providence agreed to pay \$100,000 and implement a Corrective Action Plan in response to several patient complaints arising from the loss and/or theft of laptops, backup tapes, and optical disks containing unencrypted electronic protected health information (ePHI) of over 386,000 Providence patients. Notably, Providence patients became aware of the issue after Providence notified them in accordance with state security breach notification laws.

The Corrective Action Plan imposed by HHS contains several significant requirements, including requiring Providence to: revise its policies and procedures related to physical and technical safeguards, particularly as they regard the off-site transportation and storage of electronic media containing ePHI; provide appropriate training to its workforce regarding those safeguards; conduct periodic audits of HIPAA compliance, including site visits; and submit compliance reports to HHS for three (3) years.

While the payment of \$100,000 is significant, by entering into the Resolution Agreement, Providence was able to avoid the imposition of civil monetary penalties under HIPAA, which could have amounted to several million dollars based on the circumstances. HHS commended Providence for its cooperation during the course of its investigation, which appeared to factor favorably into its resolution.

In the press release, HHS officials took the opportunity to remind health care providers and other covered entities under HIPAA that effective HIPAA compliance entails more than simply having written policies and procedures. Instead, covered entities must engage in continuous monitoring of policy compliance, including staff education and training, privacy and security staffing, and physical and technical features. The Director of the Office of Civil Rights within HHS, the agency that is responsible for enforcing HIPAA, stated that other covered entities could face similar action if they are not in compliance with the HIPAA Privacy and Security Rules.

This action by HHS indicates that the days of more active HIPAA



enforcement have arrived. In light of this action, health care providers and other covered entities should review their policies, procedures, and practices under HIPAA and take the necessary steps to achieve effective HIPAA compliance. Should you have any questions or concerns regarding this Alert, please contact Mark Swearingen at (317) 977-1458.

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