2022 Advisory Council on Employee Welfare and Pension Benefit Plans

Cybersecurity Issues Affecting Health Benefit Plans
Cybersecurity Insurance and Employee Benefit Plans

September 8, 2022 Mariah Becker, National Coordinating Committee for Multiemployer Plans
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About NCCMP and Multiemployer Plans

- NCCMP founded in 1974 following passage of ERISA
  - Only national organization devoted exclusively to educating and advocating on behalf of multiemployer pension and health and welfare plans
- NCCMP membership includes stakeholders from throughout multiemployer community
  - Multiemployer pension and health plans
  - Unions
  - Employers and Employer Associations
  - Plan professionals

About NCCMP and Multiemployer Plans

- Multiemployer plans are governed by a board of trustees with equal representation from both management and labor
- Funded solely by contributions determined as a result of collective bargaining
  - Made by employers, but negotiated out of wage/benefits package
  - Made to a trust fund that is managed by the board of trustees and operates independent of either bargaining party
  - Contributions held in trust for the exclusive purpose of providing benefit for participants
- Size and administrative structure of funds varies greatly
  - Approach to cybersecurity issues varies greatly as well

HIPAA/HITECH Foundations

Background on HIPAA Privacy, Security, and HITECH

- Health Insurance Portability and Accountability Act of 1996 (HIPAA) Administrative Simplification Provisions, and Compliance Dates:
  - Electronic Data Interchange: October 15, 2002
  - Privacy: April 14, 2003
  - Security: April 20, 2005
- The Health Information Technology for Economic and Clinical Health (HITECH) Act, was part of American Recovery and Reinvestment Act of 2009. Compliance dates are rolling:
  - Certain provisions were effective “immediately” (February 17, 2009)
  - Breach Notification was effective September 23, 2009

Latest HIPAA Security Update
New Incentive to Adopt Recognized Security Practices

- New federal law enacted January 5, 2021(Public Law 116-321)
- Applies to covered entities (e.g., health plans and health care providers) and business associates subject to HIPAA security rule
- HHS is now required to consider entity's adoption of "recognized security practices" in its enforcement activities under the HIPAA security rule
- Recognized security practices include standards, guidelines and best practices developed by the National Institute of Standards and Technology (NIST)
- Adoption of such standards can mitigate fines or result in early, favorable termination of HHS audit

Covered Entities

- Group health plans are “covered entities” and directly regulated by HIPAA
- Retirement plans are not “covered entities”
- Employers are not “covered entities” and are not directly regulated by HIPAA
  - Employers may not use information from health plans to make employment decisions (hiring, termination, etc.)

What is "Protected Health Information" or "PHI"?

- Health Information that relates to:
  - Past, present or future physical or mental health or condition of an individual, or
  - The provision of health care to an individual, or
  - Past, present or future payment for the provision of health care to an individual
- Is individually identifiable
- Is created, received or maintained by a covered entity

HIPAA Privacy and Security Rules

HIPAA Privacy Rule

Protects all types of PHI:

Electronic

Written

Oral

HIPAA Security Rule

- Applies to electronic PHI (ePHI) only
- ePHI = transmitted by electronic media or maintained on electronic media

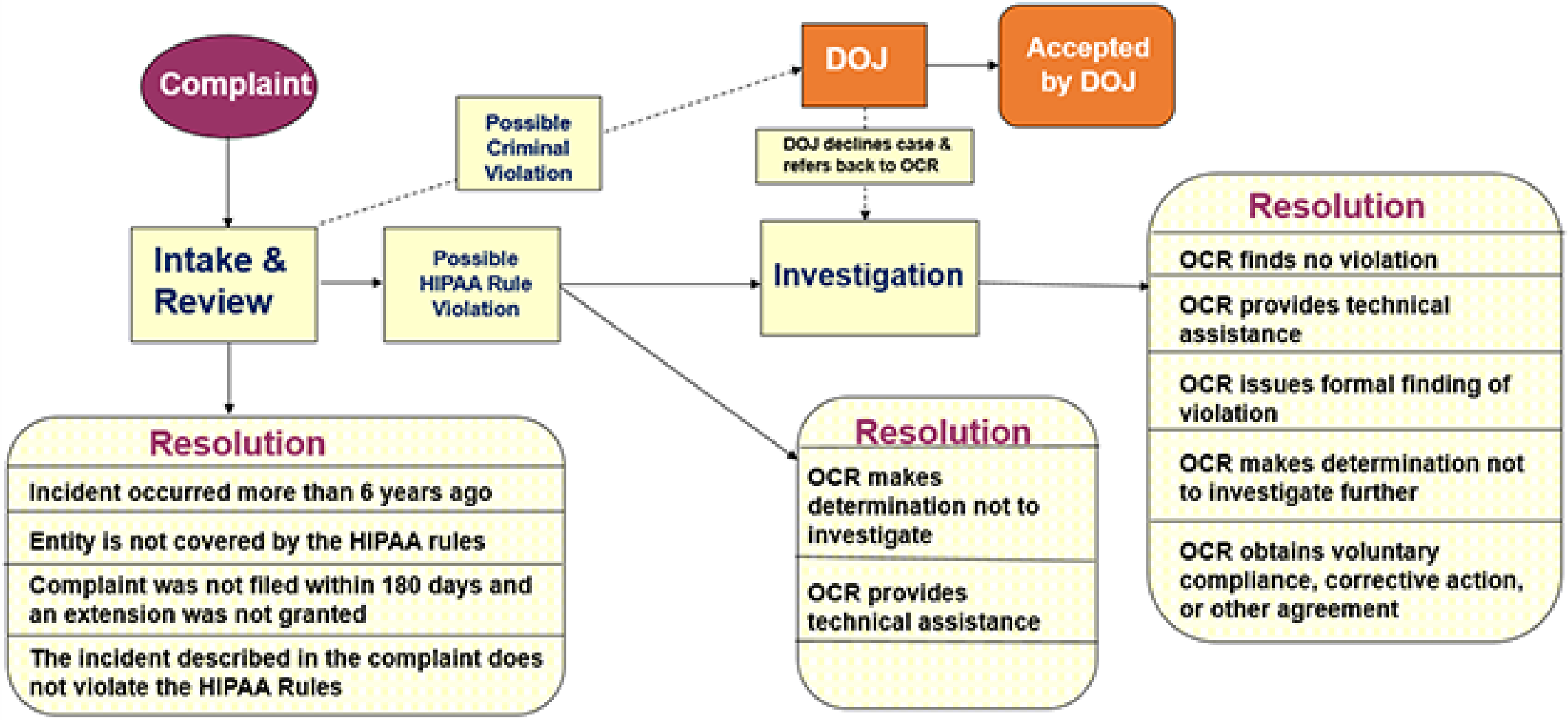
Examples:

- Sent or received via e-mail
- Stored on computer network
- Stored on computer (including laptops, netbooks or tablets)
- Stored on electronic media such as CDs, disks, flash drives, tapes or memory cards (including those in smartphones)

HIPAA Enforcement Process

- The HHS Office for Civil Rights (OCR) enforces the Privacy and Security Rules
  - Publishes detailed guidance, FAQs
  - Investigates Complaints
  - Conducts compliance reviews to determine if covered entities are in compliance
  - Performs education and outreach to foster compliance with the Rules' requirements
  - Enters into public Resolution Agreements to resolve violations
- OCR also works in conjunction with the Department of Justice (DOJ) to refer possible criminal violations of HIPAA
- Civil and criminal penalties for violations

HIPAA Complaint Process



Source: https://www.hhs.gov/hipaa/for-professionals/compliance-enforcement/enforcement-process/index.html

Published Resolutions Provide Additional Guidance

HHS > HIPAA Home > For Professionals > HIPAA Compliance and Enforcement > Resolution Agreements > OCR Settles Case Concerning Improper Disposal of Protected Health Information

- HIPAA for Professionals
- Regulatory Initiatives
- Privacy +
- Security +
- Breach Notification +
- Compliance & Enforcement −
  - Enforcement Rule
  - Enforcement Process
  - Enforcement Data
  - Resolution Agreements
  - Case Examples

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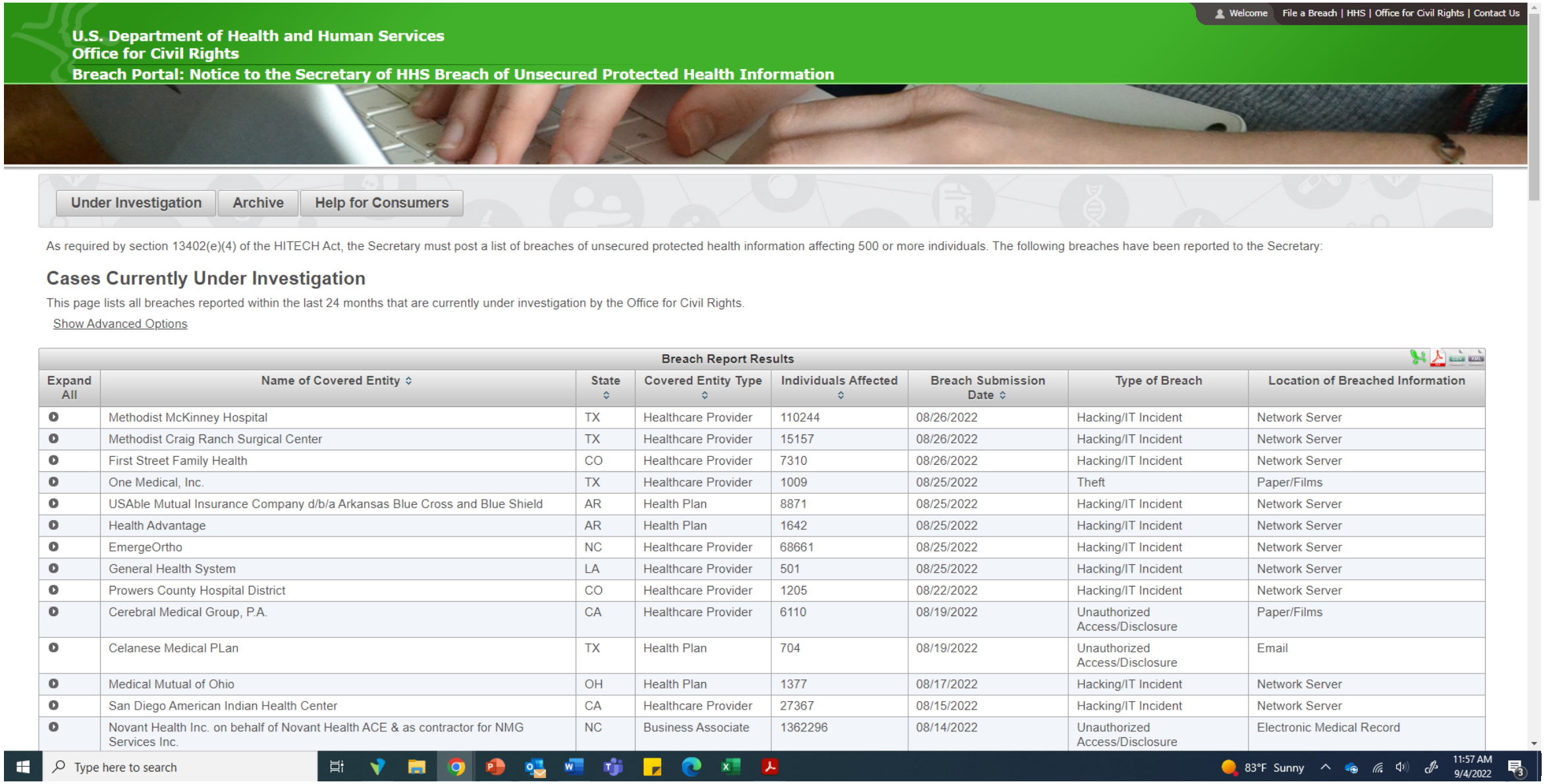
OCR Settles Case Concerning Improper Disposal of Protected Health Information

OCR announced a settlement with New England Dermatology P.C., d/b/a a New England Dermatology and Laser Center ("NDELC"), over the improper disposal of protected health information, a potential violation of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule. As a result, NEDLC paid $300,640 to OCR and agreed to implement a corrective action plan to resolve this investigation. NEDLC is located in Massachusetts and provides dermatology services.

- Read the HHS Press Release
- Read the Resolution Agreement and Corrective Action Plan
- Read OCR's FAQs concerning HIPAA and the disposal of protected health information - PDF

Content created by Office for Civil Rights (OCR)
Content last reviewed August 23, 2022

HITECH Breaches Published



Welcome | File a Breach | HHS | Office for Civil Rights | Contact Us

U.S. Department of Health and Human Services
Office for Civil Rights
Breach Portal: Notice to the Secretary of HHS Breach of Unsecured Protected Health Information

Under Investigation | Archive | Help for Consumers

As required by section 13402(e)(4) of the HITECH Act, the Secretary must post a list of breaches of unsecured protected health information affecting 500 or more individuals. The following breaches have been reported to the Secretary:

Cases Currently Under Investigation

This page lists all breaches reported within the last 24 months that are currently under investigation by the Office for Civil Rights.

Show Advanced Options

Breach Report Results

Expand All	Name of Covered Entity	State	Covered Entity Type	Individuals Affected	Breach Submission Date	Type of Breach	Location of Breached Information
	Methodist McKinney Hospital	TX	Healthcare Provider	110244	08/26/2022	Hacking/IT Incident	Network Server
	Methodist Craig Ranch Surgical Center	TX	Healthcare Provider	15157	08/26/2022	Hacking/IT Incident	Network Server
	First Street Family Health	CO	Healthcare Provider	7310	08/26/2022	Hacking/IT Incident	Network Server
	One Medical, Inc.	TX	Healthcare Provider	1009	08/25/2022	Theft	Paper/Films
	USAble Mutual Insurance Company d/b/a Arkansas Blue Cross and Blue Shield	AR	Health Plan	8871	08/25/2022	Hacking/IT Incident	Network Server
	Health Advantage	AR	Health Plan	1642	08/25/2022	Hacking/IT Incident	Network Server
	EmergeOrtho	NC	Healthcare Provider	68661	08/25/2022	Hacking/IT Incident	Network Server
	General Health System	LA	Healthcare Provider	501	08/25/2022	Hacking/IT Incident	Network Server
	Prowers County Hospital District	CO	Healthcare Provider	1205	08/22/2022	Hacking/IT Incident	Network Server
	Cerebral Medical Group, P.A.	CA	Healthcare Provider	6110	08/19/2022	Unauthorized Access/Disclosure	Paper/Films
	Celanese Medical PLan	TX	Health Plan	704	08/19/2022	Unauthorized Access/Disclosure	Email
	Medical Mutual of Ohio	OH	Health Plan	1377	08/17/2022	Hacking/IT Incident	Network Server
	San Diego American Indian Health Center	CA	Healthcare Provider	27367	08/15/2022	Hacking/IT Incident	Network Server
	Novant Health Inc. on behalf of Novant Health ACE & as contractor for NMG Services Inc.	NC	Business Associate	1362296	08/14/2022	Unauthorized Access/Disclosure	Electronic Medical Record

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HIPAA Privacy

Basic Regulatory Framework Since 2003

Covered Entity: Group Health Plan

- Multiemployer fund providing health benefits
- Health plan sponsored by single employer
- Health plan sponsored by governmental employer

BA Agreement

Business Associate ("BA")

- Provides services to Group Health Plan
- Services require PHI

Examples:

- Benefit consultants
- Actuaries
- Attorneys
- Auditors
- TPAs
- PBMs

Treatment, Payment, and Health Care Operations

- Designated health plan staff may use or disclose PHI for “payment” or “health care operations” purposes
  - Designated individuals may engage in activities that are necessary to administer the health plans
- Examples of permissible “payment” or “health care operations” activities:
  - Enrollment
  - Eligibility determinations
  - Customer service
  - Claims adjudication and payment
  - Pre-certification and referrals
  - Utilization review
  - Coordination of benefits
  - Wellness programs

Administrative Requirements - Privacy

The Privacy Rule requires health plans to (partial list):

- Appoint a Privacy Official
- Send a Privacy Notice to participants
- Develop safeguards to protect PHI
- Develop Policies and Procedures on PHI use/disclosure
- Train employees on the Privacy Rule
- Develop sanctions for Privacy Rule violations

HIPAA Security

HIPAA Security Standards

- Administrative, physical, and technical safeguards
  - Administrative safeguards: Administrative functions that should be implemented to meet the security standards. These include assignment or delegation of security responsibility to an individual and security training requirements
  - Physical safeguards: Mechanisms required to protect electronic systems, equipment and the data they hold, from threats, environmental hazards and unauthorized intrusion
  - Technical safeguards: Primarily the automated processes used to protect data and control access to data. They include using authentication controls to verify that the person signing onto a computer is authorized to access that EPHI, or encrypting and decrypting data as it is being stored and/or transmitted
- Security rule includes required and addressable implementation specifications

Administrative Security

- Role of the HIPAA Security Official
- Granting, modifying and terminating employee access
- Asset inventory
- Activity logs reviews
- Password policies
- Security training

Physical Security

Office Controls

- Security cameras
- Alarms
- Access controls for employees and visitors

Data Centers

- Environmental monitoring systems
  - Hazardous changes in heat, humidity, airflow, smoke, and electricity

Technical Safeguards

- Access Control
- Encryption and Decryption
- Audit Controls
- Mechanism to Authenticate Electronic Protected Health Information
- Integrity Controls

The Importance of a HIPAA Security Risk Assessment

Required element for compliance with the HIPAA Security Rule

- It informs development and implementation of the policies and procedures required by the Security Rule
- OCR has enforced settlements based on lack of or poorly executed risk assessments

Scope

- Systems and media that accesses, stores, and transmits ePHI

Risks and Vulnerabilities

- Eliminate, mitigate or transfer

How Often

- From annually to up to three (3) years
- When new technologies are implemented

Who Should Perform Assessments

- “Do It Yourself” (DIY) approach works for covered entities with strong internal resources and time
- Advisable to perform an independent analysis

Let's Not Forget HITECH

The HITECH (Health Information Technology for Economic and Clinical Health) Act provides guidelines for:

- Protecting ePHI at rest and in motion with encryption
- Disposal of ePHI according to NIST (National Institute of Standards and Technology) guidance

Breach Notification Requirement

- HIPAA covered entities (*i.e.*, the health plans) must now notify individuals when there's a breach of "unsecured PHI"
  - Applies to all PHI (*e.g.*, oral, paper) not just ePHI
- Also requires notice to HHS and maybe the media
- Business Associate to notify Covered Entity

New Technologies that Introduce Risks and Vulnerabilities

- Workstations and laptops
- Portable media (for example external hard drives or USB drives)
- Smartphones and tablets
- Remote connections into systems
- Internet connections and wireless networks
- Multifunction machines
- Email services
- ePHI transmission channels
- Cloud-based IT environments
- Text and instant messaging
- Voicemail
- Social media presence
- Participant portals

How has COVID-19 Changed the Risk Environment?

- Remote workers
- Use of home equipment and cell phones
- Increased reliance on website communications with participants
- Lack of stable internet access
- Security of paper files and documents
- Heightened risk of cyber attacks

Cyber Insurance Briefing

Cyber Liability Insurance Coverage in Action

How the Coverage Applies

- It provides First Party Breach Response and Expense coverage for data incidents.
- It provides Third Party Liability coverage for Claims arising out of data incidents.
- Most policies provide customized loss prevention and post breach support with industry specialists and pre-screened vendors to assist in the response.
- The increase in systematic wide spread events as well as increasing cyber claims has triggered coverage restrictions, premium and deductible increases and limits reduction.

How Does Cyber Liability Insurance Function to Cover a Data Incident?

Incident Response	First-Party	Third-Party
Coach Services	Extortion	Privacy Liability
Legal Services	Restoration	Regulatory
Forensics	Interruption	Payment Card
Notification		Network Liability
Credit Monitoring		Media Liability
Public Relations		

Breach Notification Expenses

First Party Cost Coverage

Notification

- Researching federal and state laws
- Crafting compliance letters
- Preparation and printing costs
- Mailing or delivery costs

Public Relations

- Advertising and press releases

Call Center Operations

- Operators, scripts, equipment
- Partners with legal counsel

Credit Monitoring

Forensics

- Legal expenses for outside attorney
- Cost of forensic examination
- Cost to remediate

Legal

Response to claims including lawsuits by affected parties as well as Regulatory Actions

- Defense costs
- Penalties
- Settlements and judgements

Other Potential 1st/3rd Party Costs

- Extortion expenses
  - Ransom payment
  - Negotiation expenses
  - Legal expenses
- Fraud Coverages
  - Social engineering, vendor payment
  - Computer
  - Funds transfer
- Data Loss and Restoration
- Hardware replacement costs
- Business interruption/extra expense
- Media Liability: Trademark/copyright, libel/slander

Third Party Liability including Fines and Penalties

Provides protection for Third Party liability exposures

- Covers defense costs, judgments, settlements and related liabilities caused by plaintiffs who bring suit against the insured related to handling private data
- Covers various governmental fines and penalties where insurable

Experience to Date

What litigation has resulted?

Has the litigation led to successful recoveries?

How expensive have they been?

What may the future hold?

The Benefits of Cyber Liability Insurance

- Plan Sponsors should consider Cyber Liability coverage as part of their cybersecurity strategy.
- Cyber Liability provides the first party and third party coverages to protect the plan and its participants.
- Cyber Liability provides expert vendor services and advice on a 24-hour basis.
- Better training, procedures and system controls can mean broader and more affordable coverage.
- Broad coverage maybe more difficult to find at reasonable costs even with the necessary controls in place.

Key Tips for Insurance Applications

- Who is responsible for data security?
- In there an information security policy and how are violations handled?
- What protections exist for Multi Factor Authentication controls?
- Is there an incident response plan in place?
- Is there on going security training?
- Are there contracts in place for 3rd parties who process, host or store sensitive information?
- What has the breach experience been and how was it handled?

Separate questionnaires are now often required to address Ransomware and Social Engineering Fraud exposures.

Cyber Limits & Premiums

- ✓ Premiums follows an Insured's cyber hygiene and controls
- ✓ Cyber claims can have an impact on rates and coverage
- ✓ Today's cyber market amends limits as a mechanism of responding to changing risks
- ✓ How much in limits to carry?
  - ✓ It depends on the size and scope of the business operations, type of personal information or client data handled
  - ✓ Primary and excess limits vary by market appetite

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Thank You!

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