When It Comes to HIPAA Compliance, Ignorance of the Law Is No Excuse

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The Health Insurance Portability and Accountability Act of 1996 (HIPAA) imposes many compliance rules and regulations on medical practices, mostly pertaining to matters of privacy. Many of these issues of compliance are arcane and are therefore poorly understood—or not properly comprehended at all—by healthcare providers. As a result, violations of HIPAA may be commonplace. But as is the case with all statutes, ignorance of the law is not a valid excuse for violations. Financial penalties and civil litigation may be faced when healthcare providers fail to comply with HIPAA, even if the errors are deemed unintentional.

Who Must Comply with HIPAA?

Any healthcare practice deemed "covered" is susceptible to the terms of HIPAA. According to the law, any healthcare-related provider that engages in the electronic transmission of

protected health-related information is a "covered entity." At this point, that definition would include virtually every healthcare provider.

The Changing Regulatory Climate

In the last few years, a number of high profile HIPAA violations around the country have changed attitudes about compliance and enforcement. The "laissez faire" approach that essentially encouraged a sort of honor system of voluntary compliance has given way to a much more active regulatory mindset. New guidelines related to compliance now mandate audits of covered entities and violations of the authorization provisions of the act's privacy rule are now considered a criminal offense.

If You Don't Know, You Should

Among the new coda involving HIPAA violation enforcement is an explicit statement that ostensibly innocent ignorance of the law will still be treated as a serious violation. A new HIPAA rule deems that individuals, working for covered entities, who are unaware of the need for compliance, may be fined up to $100 per unintentional violation and as much as $25,000 per year in civil penalties.

The Passage of ARRA and its Impact on HIPAA Compliance

The existence of a new enforcement climate was clarified by the passage of the American Recovery and

Reinvestment Act of 2009 (ARRA), which also stated explicitly that assessed penalties could be enacted upon individuals, not merely practices or institutions. These new ARRA points of emphasis shook up many members of the greater medical community who had become used to the more placid approach taken in response to "accidental" HIPAA violations. It had previously been thought that individuals were not liable to such mistakes and that, as long as a "good faith effort" was made to correct any recognized shortcomings with regard to compliance, no penalties would be assessed. That is no longer the case.

ARRA also imposed a new host of rules that effectively upgraded the terms of HIPAA compliance by adding regulations dealing with:

- Notification of data breaches
- Rules regarding personal health records, including limitations on the sale of PHRs
- Patient requests to restrict information to health plans
- New rules dealing with authorization related to marketing activities and fundraising
- Meeting patient requests for electronic versions of electronic medical records and fully accounting for the disclosure of EMRs

The End Game

All of these new rules, regulations and interpretations increase the likelihood of inadvertent violations of HIPAA

and, coupled with the new enforcement mentality, raise the potential for healthcare providers to face significant fines. Providers are strongly encouraged to familiarize themselves with all of the provisions of HIPAA and to take the matter of enforced compliance very seriously. Contacting a healthcare IT professional can help you be certain that you understand the issues of compliance.

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