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HEALTHCARE BULLETIN

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HHS IMPOSES FIRST-EVER HIPAA PENALTIES

The U.S. Department of Health and Human Services (“HHS”) imposed the first-ever penalties under the HIPAA Privacy and Security Rules on Providence Health & Services (“PHS”) on July 15, 2008. Over five years after the Privacy Rule became effective, and over three years after the Security Rule took effect, HHS imposed a \$100,000 “resolution amount” payment on PHS for alleged violations of both the Privacy and Security Rules committed during 2005 and 2006. Under the terms of a Resolution Agreement with HHS, PHS agreed to a strict corrective action plan (“CAP”) in addition to the monetary sanction to settle HHS’s claims. If PHS complies with the terms of the Resolution Agreement and the CAP for a period of three years, HHS will release claims against the provider for the alleged underlying HIPAA violations. PHS did not admit to any HIPAA liability under the agreement.

Alleged Violations

The Resolution Agreement will settle two categories of incidents that allegedly occurred between 2005 and 2006. First, four computer backup tapes and two optical disks containing electronic personal health information (“ePHI”) of PHS patients were stolen from the unattended personal vehicle of a PHS employee. The employee took the tapes and disks from the PHS premises with the knowledge of some managers, according to a practice in place at the time of the incident. The ePHI contained on the stolen tapes and disks was not encrypted. Second, on four separate dates, laptops containing unencrypted ePHI were left unattended by PHS personnel and stolen. The laptops held ePHI for over 386,000 patients.

The CAP

The CAP requires PHS to prepare written policies and procedures, subject to review and approval by HHS, that address the requirements of the Privacy and Security Rules within 60 days of entering into the Resolution Agreement. If HHS requires revisions to the policies and procedures, PHS will have 60 additional days to revise them. Within 60 days of approval by HHS of the policies and procedures, PHS is required to submit evidence that it has implemented them. PHS must also provide evidence that it has distributed the policies and procedures to all PHS personnel within 30 days of approval by HHS. The PHS personnel must sign attestations that they have read, understood and will abide by the policies and procedures.

Under the CAP, PHS must conduct an assessment to determine potential risks to ePHI and implement specific physical and technical safeguards to protect against those threats. In addition, the



CAP imposes HIPAA training requirements for PHS personnel and monitoring reviews to be performed by the PHS Chief Information Security Officer to assess the provider’s HIPAA compliance. Finally, the CAP imposes initial and annual reporting requirements on PHS. The CAP specifies the information that PHS must provide to HHS and to which it must certify accuracy.

Significance of Penalties

HHS had been criticized for not enforcing the Privacy or Security Rules against any covered entities prior to the PHS Resolution Agreement. It is too soon to determine whether this case represents the vanguard of new HIPAA enforcement actions, or an isolated matter considered extreme by HHS. At minimum, however, the Resolution Agreement shows that HHS is willing to strictly enforce the Privacy and Security Rules in cases it determines appropriate.

Should you have any questions, please do not hesitate to contact one of our healthcare attorneys at the offices below.

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