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HIPAA VIOLATION RESULTS IN \$650,000 SETTLEMENT & CORRECTIVE ACTION PLAN FOR BUSINESS ASSOCIATE

by: Patricia Scidmore

The U.S. Department of Health and Human Services (HHS) Office for Civil Rights (OCR) recently announced its settlement with a business associate, Catholic Health Care Services of the Archdiocese of Philadelphia (CHCS) for failure to perform risk analysis and risk management as required under the Health Insurance Portability and Accountability Act (HIPAA) Security Rule. (See 45 C.F.R. §164.308(a)(1)(ii)(A) and (B)).

CNCS is a nonprofit corporation that provided management and information technology services as a business associate to six skilled nursing facilities. In February 2014 the OCR received separate notifications, as required under the Breach Notification Rule, from each of the six nursing homes regarding a breach of the unsecured electronic protected health information (ePHI) involving the theft of a CHCS-issued employee iPhone that was unencrypted and was not password protected. In April 2014, OCR commenced its investigation of CHCS compliance, a mere seven months after the HIPAA Omnibus Rule extended the HIPAA Privacy and Security Rules (and exposure to related penalties) to business associates.

The information on the iPhone was extensive and included social security numbers, information regarding diagnosis and treatment, medical procedures, names of family members and legal guardians and, medication information of the 412 nursing home residents. At the time of the incident, CHCS had no policies addressing the removal of mobile devices containing ePHI from its facility or what to do in the event of a security incident. OCR also determined that CHCS had no risk analysis or risk management plan.

In determining the resolution amount, OCR considered that CHCS provided the unique and much-needed services in the Philadelphia region to the elderly, developmentally disabled individuals, you adults aging out of foster care and, individuals living with HIV/AIDS. OCR will monitor CHCS for two years not only as to compliance with HIPAA but also with extensive Corrective Action Plan obligations that involves: risk analysis and risk management; development, implementation and proof of distribution/ education of personnel of policies and procedures to be reviewed and approved by OCR; reporting to OCR workforce members who fail to comply with policies and procedures (Reportable Events); providing to OCR copies of business associate agreements and management services agreements with all covered entities; and proof of training to OCR (and the security training materials) of all workforce members who have access to ePHI.

Significance: This announcement shows that OCR is serious about taking a strong enforcement action and imposing severe penalties against business associates for failure to implement safeguards as required under the HIPAA Privacy, Security and Breach Notification Rules. This settlement

continues OCR's expansion of its enforcement focus on business associates. All mobile devices need to be addressed, not just iPhones but iPads, laptops, tablets and all other mobile electronic devices, including thumb drives.

About the Author:

A Senior Attorney at Wroten & Associates, Patricia N. Scidmore served as an associate with Madory, Zell, Pleiss & McGrath, APC since 1992. She concentrates her practice in medical malpractice and personal injury. She has provided forensic nursing consultation and nursing expert testimony in numerous medical malpractice actions for both the defense and plaintiff bar. She is an experienced litigator in binding arbitrations. In addition, she has lectured at numerous healthcare and legal symposiums, and educational seminars, concerning healthcare and legal issues.

Ms. Scidmore's 17 years of clinical practice consisted of a combination of both clinical and administrative nursing practice, concentrated in the areas of Critical Care and Emergency Department Nursing. Ms. Scidmore was certified as a Critical Care Nurse (CCRN) in 1978. She developed the first Critical Care Nursing Internship Program in Southern California for new graduate R.N.s, furthering the development of other hospital-based, post-graduate, specialty nursing programs. She also served several years as the Nursing Director of a multi-specialty Critical Care Unit at one of the Los Angeles County Level I Designated Trauma Centers. She was also integrally involved in the clinical education of medical interns and residents assigned to the Critical Care and Emergency Departments.

Ms. Scidmore received her Bachelor of Science, Nursing from California State University Long Beach, Cum Laude, in 1974, her Vocational Teaching Credential from the University of California at Los Angeles in 1976 and, her Juris Doctor from Pacific Coast University in 1990.

Ms. Scidmore was admitted to the California State Bar and the U.S. District Court – Central District in 1991. She was admitted to the U.S. Supreme Court and Ninth Circuit Court of Appeals in 1995