



BENEFIT NEWS BRIEFS

\$4.3 Million Reasons to Obey the HIPAA Privacy Rule

First Civil Money Penalty By HHS For HIPAA Privacy Rule Violations

Earlier this year, the Department of Health and Human Services' (HHS) Office for Civil Rights (OCR) issued a Notice of Final Determination (Notice) against a health care provider that failed to comply with the *HIPAA Privacy Rule*. The Provider learned "*\$4.3 Million Reasons to Obey The HIPAA Privacy Rule.*" In this particular instance the provider seemed intent on purposefully tweaking HHS' nose by failing to cooperate during the investigation. A word of advice, don't start meaningless battles. The government will outman and outspend you. Besides, violations of the law are also fiduciary violations and intentional violations of a fiduciary's duty could invite criminal prosecutions more easily.

According to the HHS *Press Release*, the Notice found that Cignet Health of Prince George's County, Md., (Cignet) violated the *HIPAA Privacy Rule* for which HHS imposed a civil money penalty (CMP) of \$4.3 million for the violations, which was the first CMP issued by the Department for a covered entity's violations of the *HIPAA Privacy Rule*. The *Press Release* detailed the facts, as retold below.

OCR found that Cignet violated 41 patients' rights by denying them access to their medical records when requested between September 2008 and October 2009. These patients had individually filed complaints with OCR, initiating investigations of each complaint. The *HIPAA Privacy Rule* requires that a covered entity provide a patient with a copy of their medical records within 30 (and no later than 60) days of the patient's request. The CMP for these violations was \$1.3 million.

Then, in a move that seems designed to purposefully ratchet up the investigation, Cignet refused to respond to various OCR demands to produce the records. Additionally, Cignet failed to cooperate with OCR's investigations of the complaints and produce the records in response to OCR's subpoena. OCR was forced to file a petition to enforce its subpoena in United States District Court and obtained a default judgment against Cignet. Shortly thereafter, Cignet produced the medical records to OCR.

Contemporaneously, Cignet failed to cooperate with OCR's investigations on a continuing daily basis from March 17, 2009, to April 7, 2010. (That's 386 days folks!)

The OCR found that the failure to cooperate was due to Cignet's willful neglect to comply with the *HIPAA Privacy Rule*. Under the law, covered entities are required to cooperate with the Department's investigations. The CMP for these violations was \$3 million.

A copy of the Notices sent by HHS to Cignet can be found at: <http://www.hhs.gov/ocr/privacy/hipaa/news/cignetnews.html>.

Additional information about OCR's enforcement activities can be found at <http://www.hhs.gov/ocr>.

This story may serve as inspiration for covered entities to continue to vigilantly keep up with *HIPAA Privacy Rules* developments and comply with their duties under the *Privacy Rules*. While the average multiemployer health plan would doubtfully never deny members access to their PHI or fail to cooperate in an investigation, the cost of non-compliance can still be expensive if the error is great enough.

As Dr. Benjamin Franklin noted, "*An ounce of prevention is worth a pound of cure.*"

Daily vigilance in keeping staff trained and occasional reminders and refreshers are inexpensive steps to take compared to the cost of *HIPAA Privacy Rule* violations.

And, remember, a smile and good manners go a long way to avoiding the lesson of "*\$4.3 Million Reasons to Comply with the HIPAA Privacy Rule.*"

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