Develop a Proactive HIPAA Complaint Process, Lawyer Advises

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San Diego — Health care organizations need a proactive process in place to deal with Health Insurance Portability and Accountability Act complaints, Tere sa A. Williams, in-house counsel for Integ ris Health Inc., said at the annual meeting of the American Health Lawyers Association. Having an effective complaint process in place could reduce the number of complaints patients file with government agencies.

At present, HIPAA enforcement is primarily complaint based, Ms. Williams said. During the first year of enforcement, 1,648 complaints were filed with the Office for Civil Rights (OCR), according to a report published by the Government Accountability Office. Of those, about 56% alleged impermissible use of and disclosure of protected health information, about 33% alleged inadequate safeguards, and about 17% concerned patient access to information. (Percentages total more than 100 because some complaints fall into more than one category.)

As of June 30, 2005, OCR has received more than 13,700 complaints, and has closed 10,700 of those. They’ve been closed because the alleged activity actually did not violate the privacy rule, or because OCR lacks jurisdiction, or because the complaint was resolved through voluntary compliance. To date, OCR hasn’t actually imposed any monetary penalties.

OCR is making every effort to resolve potential cases informally. Ms. Williams gave an example from her company. Last fall, a patient at one of Integris’ rural facilities filed an OCR complaint alleging her son’s health information had been improperly disclosed. Within 2 days, Integris was able to confirm, through an audit trail, that this had in fact happened, and the responsible employee was terminated.

OCR then requested a copy of the ex- planatory letter sent to the complainant, records showing that the employee had re ceived appropriate training about HIPAA, and written evidence of termination. “It was all very informal, just a series of phone calls and letters back and forth,” Ms. Williams said. “It took only about 2 months for our case to be closed.”

Ms. Williams advises health care organizations to put a strategy in place for handling potential HIPAA complaints. Here are the key steps:

- Train staff on appropriate records and documentation.
- Develop and enforce discipline policies.
- Develop a complaint form.
- Conduct training to inform staff about appropriate uses and disclosures of protected health information.

 Enforcement Rule Needs Clarification

T he final installment of the HIPAA enforcement rule was released on April 18, 2005. Civil monetary penalties are set at a maximum of $100 per violation, up to a maximum of $25,000 for all violations of an identical requirement per calendar year.

But a single act can create multiple violations, Ms. Williams pointed out. That’s because the rule uses three variables to calculate the number of violations:

- The number of times a covered entity takes a prohibited action or failed to take a required action.
- The number of persons involved or affected.
- The duration of the violation, measured in days.

Under the new rule, information about civil monetary penalties, including reason for the penalty and identity of the covered entity, will be made available to the general public. It is not clear whether this happens when the penalty is first imposed, or after legal appeals are completed.

“This provision is a bit worrisome,” Ms. Williams said. If an emergency department, over a 3-month period, doesn’t collect and file written acknowledgments of privacy notifications, that would count as numerous violations of the privacy rule.

If a consumer then reads in the paper that your hospital paid hundreds of thousands of dollars for a thousand violations of the privacy rule, that’s arguable misconduct,” Ms. Williams said. This is an area that hopefully will be clarified and changed.”

Dr. Kibbe said recent visits to practices in North Carolina and Tennessee indicate that rural practices aren’t behind the curve. “My staff and I made over 25 appearances at state chapter events, everywhere from Alaska to Hawaii, including some very rural areas, and we got a good feeling about what’s happening in rural practices.”

Although many practices have found ways to comply with the HIPAA electronic claims submission regulation, the requirements do create a hardship for physicians in rural areas that aren’t affiliated with large health care groups or hospitals that have the resources for a health IT system, Bernard Proy, M.D., a family physician in Corry, Pa., said. “If you’re just a small rural practice, you don’t have access to that kind of capital or technology.”

Establishing an electronic health record on your own can get costly—up to $10,000 to $100,000, continued. “No one’s paying to have that available, and that creates a difficulty.”

Dr. Proy’s office does have an electronic billing system in place, but he’s defer ring from getting a full-blown electronic health record system until he sees what kind of support the federal government will be offering.