Addressing Privacy in a New Era of Enforcement

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DEFINING SUCCESS TOGETHER

Time for the Training Wheels to Come Off

- December 28, 2000 – HHS publishes HIPAA Privacy Rule
- April 14, 2003 – Compliance deadline for Privacy Rule
- July 16, 2008 – First HIPAA settlement
- February 17, 2009 – HITECH Act directs HHS to penalize all violations due to “willful neglect”
- December 2012 - HIPAA privacy and security audits begin

Formal Enforcement Starts to Trickle

- 2010-2011 – HHS reaches four settlements and issues one CMP (up from only two before 2010)
- CT, VT, and MN attorneys general bring enforcement actions under HITECH Act
- State governments (e.g., CA) get more aggressive under state law

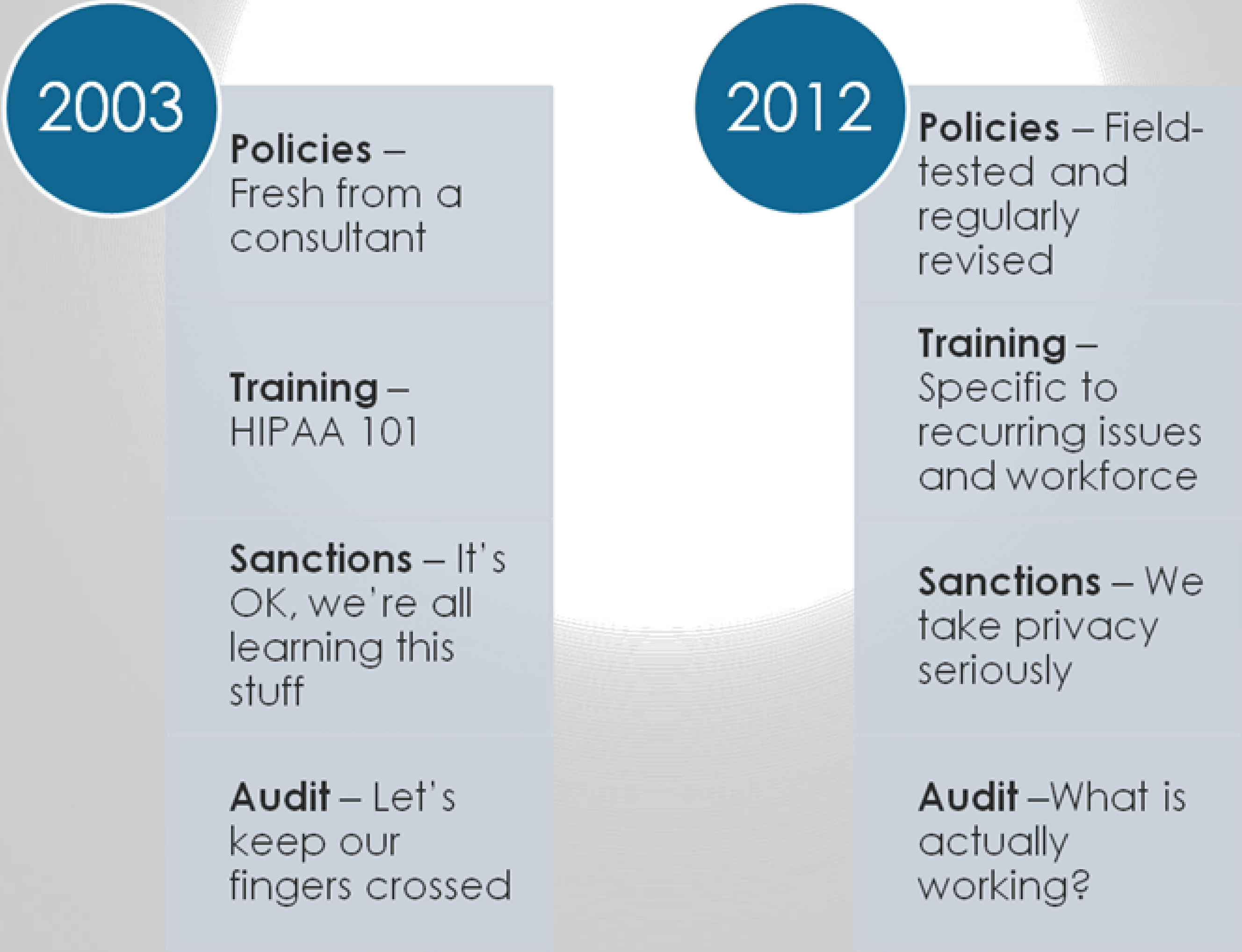
Class-Action Lawsuit Frenzy Begins

- "Health Net Inc. and IBM face a class-action lawsuit seeking $5 million in damages over the loss of computer storage devices ...."
- "A class-action lawsuit seeking as much as $16 million ... over a data breach ... at the UCLA Health System."
- "11 class-action lawsuits against Sutter Health over a data breach are being consolidated ... could amount to between $944 million and $4.25 billion total, not including attorneys' fees and court costs."

Cheer Up!

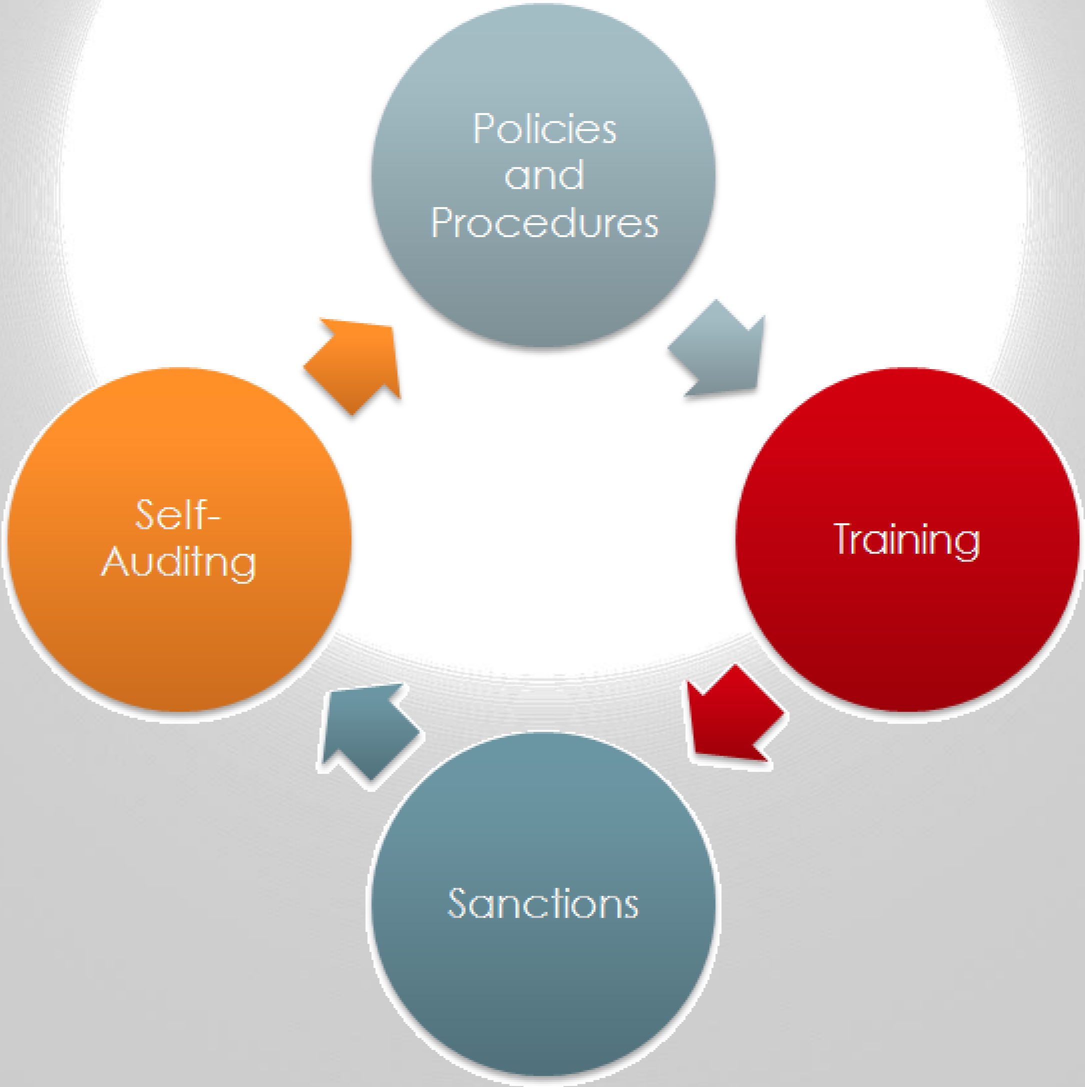
- There are steps you can take…

Update your Privacy Program



2003	2012
Policies – Fresh from a consultant	**Policies** – Field-tested and regularly revised
Training – HIPAA 101	**Training** – Specific to recurring issues and workforce
Sanctions – It's OK, we're all learning this stuff	**Sanctions** – We take privacy seriously
Audit – Let's keep our fingers crossed	**Audit** –What is actually working?

Focus on Continuous Compliance



Policies and Procedures

Training

Sanctions

Self-Auditng

Assess Privacy Policies and Procedures

- Privacy Rights
  - Are patients actually receiving notices of privacy practices?
  - Are all requests for restrictions considered?
  - When are requests for alternative communications “reasonable”?
  - Are access/amendment requests recognized and timely handled?
  - Are disclosure logs maintained?

Assess Privacy Policies and Procedures

- Uses and Disclosures
  - Do policies address recurring categories of uses and disclosures?
  - Do procedures prove effective in real world situations?
  - Have minimum necessary policies been created for routine requests, uses, and disclosures?
  - Are minimum necessary criteria applied to nonroutine requests, uses, and disclosures?

Assess Privacy Policies and Procedures

- Breach Notification
  - Do policies and procedures provide a clear path for notification within the organization?
  - Are there objective criteria for judging what constitutes a breach?

Evaluate Training

- Does training adequately cover basic concepts?
- Is training tailored to issues arising in your organization?
- Does training focus on issue spotting (e.g., potential breach)?
- Does training focus on real-world situations?

Enforce Consequence for Noncompliance

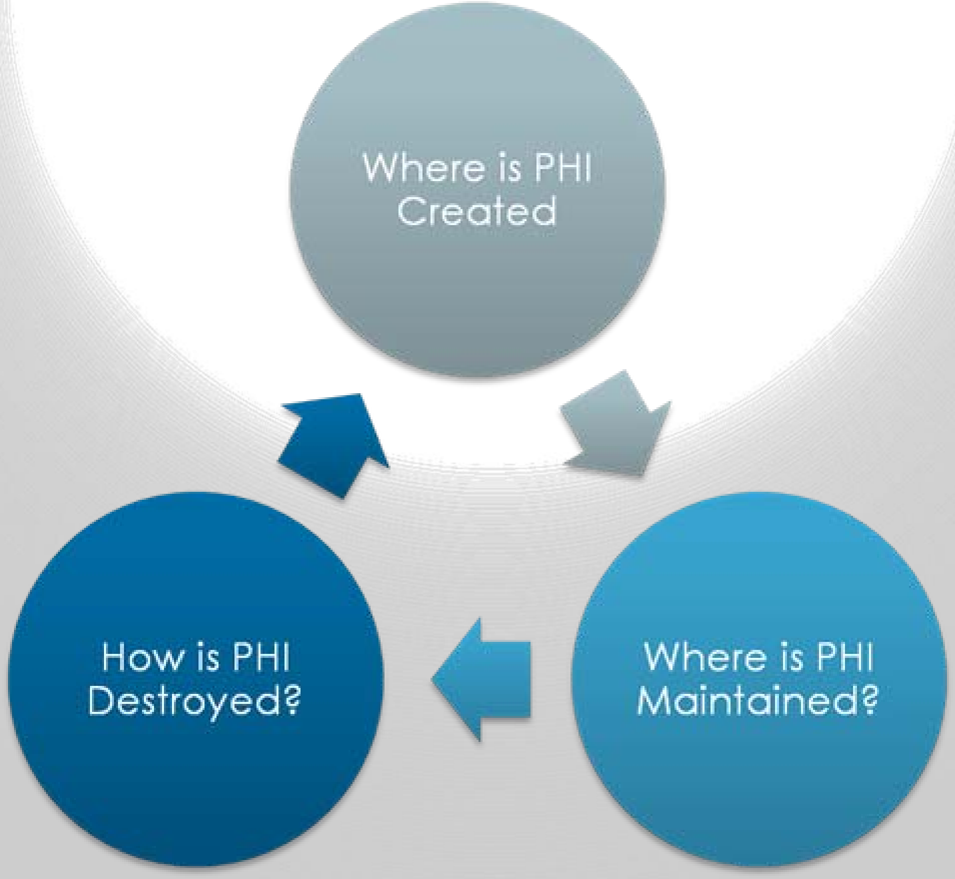
- Noncompliance should have consequences … for all members of the workforce.

- Sanctions policies can have flexibility to handle different levels of noncompliance.

- Sanctions experience can inform policies, training, and safeguards.

Auditing Effectiveness

Follow the PHI



Where is PHI Created

Where is PHI Maintained?

How is PHI Destroyed?

Auditing Effectiveness

- Some procedures will not work – you need to discover this before patients or the government.
  - Do employees understand training?
  - Is PHI being properly maintained at workstations?
  - How is PHI actually disposed?

Document, Document, Document

- Policies and procedures (new and old)
- Patient privacy requests
- Complaint investigations
- Training (substance and certifications)
- Sanctions (including any retraining/counseling)
- All safeguards

Questions

For more information

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