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## Health Insurance Exchange/Marketplace Privacy and Security Issues

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# ACA Exchange System

- The Affordable Care Act
  - Provides for each state to have a health insurance exchange
- Exchanges are:
  - Competitive market places where individuals and businesses can purchase private health insurance
  - Provide one-stop shopping
    - Information about options
    - Eligibility assessments(e.g., for qualified health plans, premium tax credits, cost sharing reductions)
    - Enrollment
- States can operate own exchange or participate in Federally Facilitated Exchange
- State exchanges must comply with federal privacy and security standards



## ACA Exchange System (cont'd)

- Data Services Hub
  - Conduit for Exchanges to access data from federal agencies
  - Enables verification of coverage eligibility
  - Provides data for paying insurers
  - Provides data for use in Web portals for consumers
  - Data transits through Hub
    - CMS says no data is stored in Hub
    - Some critics dispute this



## ACA Exchange System (cont'd)

- Federal agency databases connected to the Hub
  - IRS
  - HHS
  - SSA
  - DHS
  - VA Health Administration
  - DoD
  - OPM
  - Peace Corps



## Multiple Threats to Exchange System Security

- Perpetrators:
  - APT (Foreign State-Sponsored)
  - Cyber criminals
  - “Hacktivists”/Terrorists
  - Internal Threats
    - Employees, contractors
    - May be negligent or malicious
- Varying Motivations:
  - Financial Gain (e.g., from credit card theft, ID theft)
  - Social or Political Activism
  - Disruption of services/operations (e.g., knock systems off-line)



# Understanding the Threat

- Federal agencies are already targets
  - 50,000 computer hacking incidents reported by federal agencies in 2012
  - Up from 5,500 incidents in 2006
- Cyber attacks are top concern of FBI
- State systems are also targets
  - *E.g.*, S.C. Department of Revenue
- The Exchange System is a target-rich environment



## Target-Rich Environment

- Attractive target for purposes of identity theft
  - Exchange System Provides Access to Large Amounts of Personal Information, such as:
    - Social Security Numbers
    - Employment Status
    - Income
    - Military Service
    - Citizenship
    - Health Information (e.g., pregnancy status, tobacco use)
- Attractive target for persons/entities who want to disrupt system for political or terrorist purposes



# Statutory Security/Privacy Requirements

- Affordable Care Act
  - Requires HHS to develop secure standards and protocols
- FISMA (Federal Information Security Management Act)
- Privacy Act of 1974
- Internal Revenue Code





## Statutory Security/Privacy Requirements (cont'd)

- HIPAA
  - Exchanges may be “covered entities”
- HITECH Act (Health IT for Economic & Clinical Health Act)
  - Exchanges may be “covered entities”
- State security/privacy laws
  - Most focus on breach notification requirements
    - No uniform definition of “breach”



# HHS Exchange Regulations

## **45 CFR §155.260 HHS Exchange Regulations**

- Requires exchanges to implement privacy and security standards, including safeguards
  - Operational, technical, administrative and physical
- Safeguards Must Ensure:
  - Confidentiality, integrity and availability of PII
  - PII is used by/disclosed only to authorized people
  - Tax return information is kept confidential
  - PII is protected against any reasonably identified threats
  - PII is securely destroyed
- HHS will monitor Federal Exchange and State exchanges for compliance



# HHS Proposed Regulation

- Proposed regulation:
  - Exchanges to manage cybersecurity incident/breach in accordance with internal incident handling/breach notification procedures
  - Exchanges to report all privacy and data security incidents to HHS within one hour of discovery



# Security Issues With Exchange System

- HHS OIG Report (8/2/2013)
  - Warned that security of the Hub was an issue
- CMS Fact Sheet (9/11/2013)
  - Stated that Hub is secure
  - Systems will employ a continuous monitoring model to identify irregular behavior
  - Incident response capability activated if security incident



## Security Issues With Exchange System (cont'd)

- DOJ/HHS/FTC Initiative (9/18/2013)
  - Interagency initiative to prevent consumer fraud and privacy violations
- Security issues emerge when Exchange System becomes operational on October 1
- Independent contractor reported final results of security testing of Healthcare.gov to HHS (mid-October)



## Security Issues With Exchange System (cont'd)

- Congressional Hearings (November 2013)
- Treasury Inspector General Report (12/3/2013)
  - Reviewed systems for assessing eligibility for automatic tax credits under ACA
  - Found required cybersecurity controls were only partially implemented
- Replacement of major Healthcare.gov contractor announced (1/10/2014)
- Proposed legislation



- QUESTIONS?

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