



Navigating the HIPAA Enforcement Landscape Under the New Administration

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My Presentation

- Discuss the new administration's perspective and likely activities in connection with health care privacy and security
- Discuss major areas of change over the next few years
- Answer your questions about the future of healthcare privacy and security

The New Administration

- We really know nothing about any intentions in the specific world of health care privacy and security
- Not a first, second or even third tier issue
- General consensus is that there are few strong policy positions beyond first tier issues and general philosophy

The New Administration

- Relevant philosophical points
- Overall concern about cybersecurity
- Willingness to engage in broad personal data review surveillance and oversight
- Presumably less government regulation
- Perhaps less governmental spending
- Perhaps less overall government enforcement

Health Care

- Most important political position relevant to these issues involves antagonism towards the ACA
- More difficult to just repeal than political statements indicate
- Expect this to be the primary focus of Administration activity in connection with health care over first several months (at least)

Health Care

- Expect ongoing development of alternative health care program to be a continuing focus for most of the year
- Any new health care program requires data
- Many of recent programs have involved some privacy rules different than HIPAA
- Will be important to watch that development

Cybersecurity

- Overall expressed concern about state of cybersecurity readiness
- Cybersecurity activities to date have involved “critical infrastructure” and sharing of information about cyber-threats more than specific cybersecurity practices

Cybersecurity

- For cybersecurity, effective protection is simply an expansion or increased focus on what is required by HIPAA security rule
- You should already have a strong cybersecurity program in place
- Cybersecurity principles go beyond personal data to protecting corporate, proprietary and systems issues

Key Issues to Consider

- Changes to the HIPAA law/regulations
- Staffing/Leadership
- Enforcement approach

Changes to law/regulations

- Hard to see any push to change statutory language
- Unlikely to see new regulatory proposals, at least in early period (and likely longer)
- Unlikely to see pulling back on privacy rights
- Unlikely to see new HITECH rules that have been on hold (at least in short term)

Staffing/Leadership

- Expect a new OCR Director at some point
- An interim appointment for the time being from existing leadership
- Other senior leadership likely will stay in place (at least in short term)
- No particular reason to see any dramatic changes in overall approach

Enforcement

- Enforcement certainly has been growing, but on a slow and steady basis
- Mainly growing because of low levels of enforcement activity in early years
- No particular reason to expect any fundamental change in enforcement philosophy

Enforcement

- Pending investigations take a long time to finish
- So no reason to think current staff won't follow those through to completion
- Future enforcement depends primarily on budget and resources more than philosophy

Major Issue to Watch

- Business Associate Enforcement
- Many BAs are not in reasonable compliance with HIPAA Security Rule, particularly on documentation
- A real challenge for OCR – how to treat companies who deal with clients outside of healthcare as well

Keys for CEs/BAs

- 1. Risk Assessment
- 2. Risk Assessment
- 3. Risk Assessment
- 4. Seriously. Do a risk assessment.

Other Keys

- Be responsive to any inquiries – thorough, timely, accurate
- Fix your problems – both immediate mitigation of breach-related issues and longer term process issues
- Make sure you have BA Agreements with everyone you should

Questions?

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