An Update on HIPAA Policy and Enforcement

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HIPAA Policy Development

OCR Responds to Nation's Opioid Crisis

- Opioid abuse crisis and national health emergencies have heightened concerns about providers':
  - ability to notify patients' family and friends when a patient has overdosed
  - reluctance to share health information with patients' families in an emergency or crisis situation, particularly patients with serious mental illness and substance use disorder
  - uncertainty about HIPAA permissions for sharing information when a patient is incapacitated or presents a threat to self or others

New OCR Guidance on HIPAA and Information Related to Mental and Behavioral Health

- Opioid Overdose Guidance (issued 10/27/2017)
- Updated Guidance on Sharing Information Related to Mental Health (new additions to 2014 guidance)
- 30 Frequently Asked Questions
- New Materials for Professionals and Consumers
  - Fact Sheets for patients, families, and health care providers
  - Information-sharing Decision Charts

Dangerous Patients and Public Safety Disclosures

- Disclosures are permitted without the patient's authorization or permission to law enforcement, family, friends or others who are in a position to lessen the threatened harm—when disclosure "is necessary to prevent or lessen a serious and imminent threat to the health or safety of the patient or others."
- Disclosures must be consistent with applicable law.

Where to Find OCR's New Materials

- For professionals: https://www.hhs.gov/hipaa/for-professionals/index.html > Special Topics > Mental Health & Substance Use Disorders
- For consumers: https://www.hhs.gov/hipaa/for-individuals/index.html > Mental Health & Substance Use Disorders
- Mental Health FAQ Database: https://www.hhs.gov/hipaa/for professionals/faq/mental-health
- Future FERPA and HIPAA Joint Guidance

Proposed Changes to HIPAA Privacy and Enforcement Rules

- NPRM on Presumption of Good Faith of Health Care Providers
- NPRM on Changing Requirement to Obtain Acknowledgment of Receipt of Notice of Privacy Practices
- Request for Information on Distribution of a Percentage of Civil Monetary Penalties or Monetary Settlements to Harmed Individuals

Future HIPAA Guidance

- Texting
- Social Media
- Encryption

RECENT HIPAA ENFORCEMENT AND BREACH HIGHLIGHTS

HIPAA Enforcement Highlights
April 14, 2003 – January 31, 2018

- Over 173,426 HIPAA complaints received to date
- Over 25,695 HIPAA cases resolved with corrective action and/or technical assistance
- Expect to receive over 24,000 HIPAA complaints this year

Enforcement, cont.

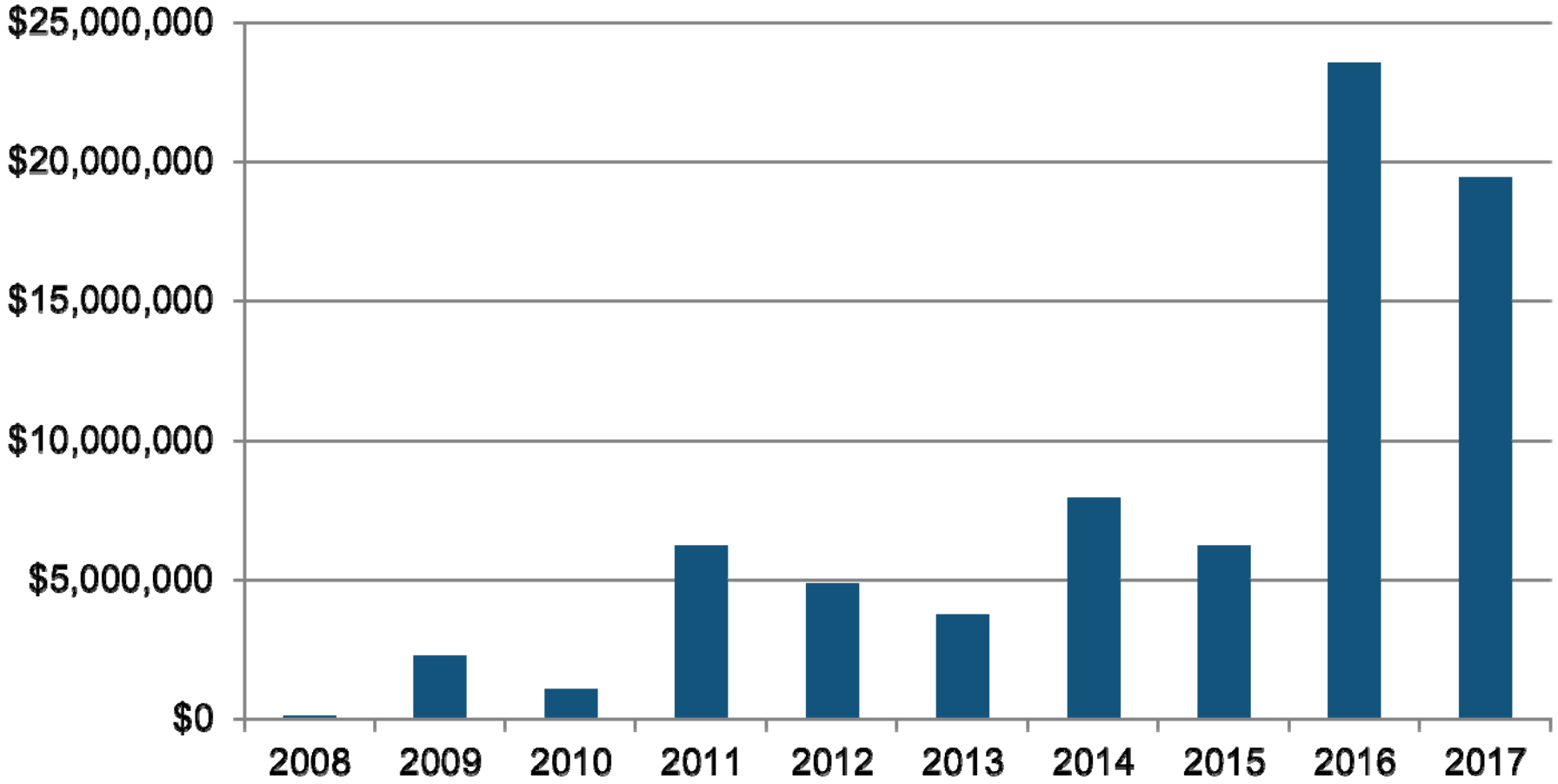
- In most cases, entities are able to demonstrate satisfactory compliance through voluntary cooperation and corrective action during the investigation
- In some cases though, the nature or scope of indicated noncompliance warrants additional enforcement action
- Resolution Agreements/Corrective Action Plans
- 52 settlement agreements that include detailed corrective action plans and monetary settlement amounts
- 3 civil money penalties

HIPAA Enforcement since April 2017

4/12/2017	Metro Community Provider Network	$400,000
4/21/2017	Center for Children's Digestive Health	$31,000
4/21/2017	CardioNet	$2,500,000
5/10/2017	Memorial Hermann Health System	$2,400,000
5/23/2017	St. Luke's-Roosevelt Hospital Center	$387,200
12/28/2017	21st Century Oncology	$2,300,000
2/1/2018	Fresenius Medical Care North America	$3,500,000
2/13/2018	FileFax	$100,000

Total $11,618,200

HIPAA Resolution Agreements and Civil Monetary Penalties



50 settlement agreements and 3 civil money penalties through 2017

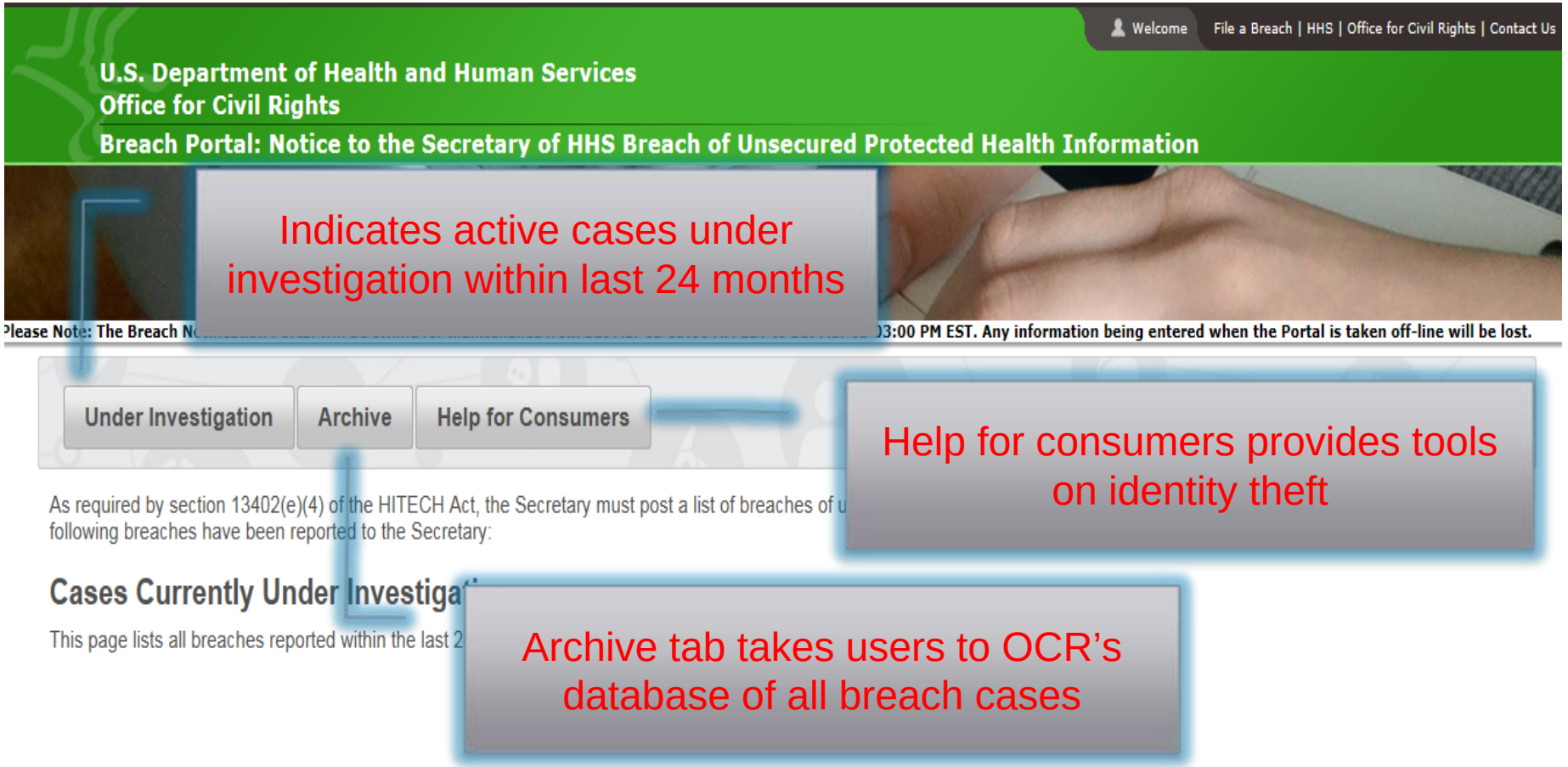
Recurring Compliance Issues

- Business Associate Agreements
- Risk Analysis
- Failure to Manage Identified Risk, e.g. Encryption
- Lack of Transmission Security
- Lack of Appropriate Auditing
- No Patching of Software
- Insider Threat
- Improper Disposal
- Insufficient Data Backup and Contingency Planning

New HIPAA Breach Reporting Tool

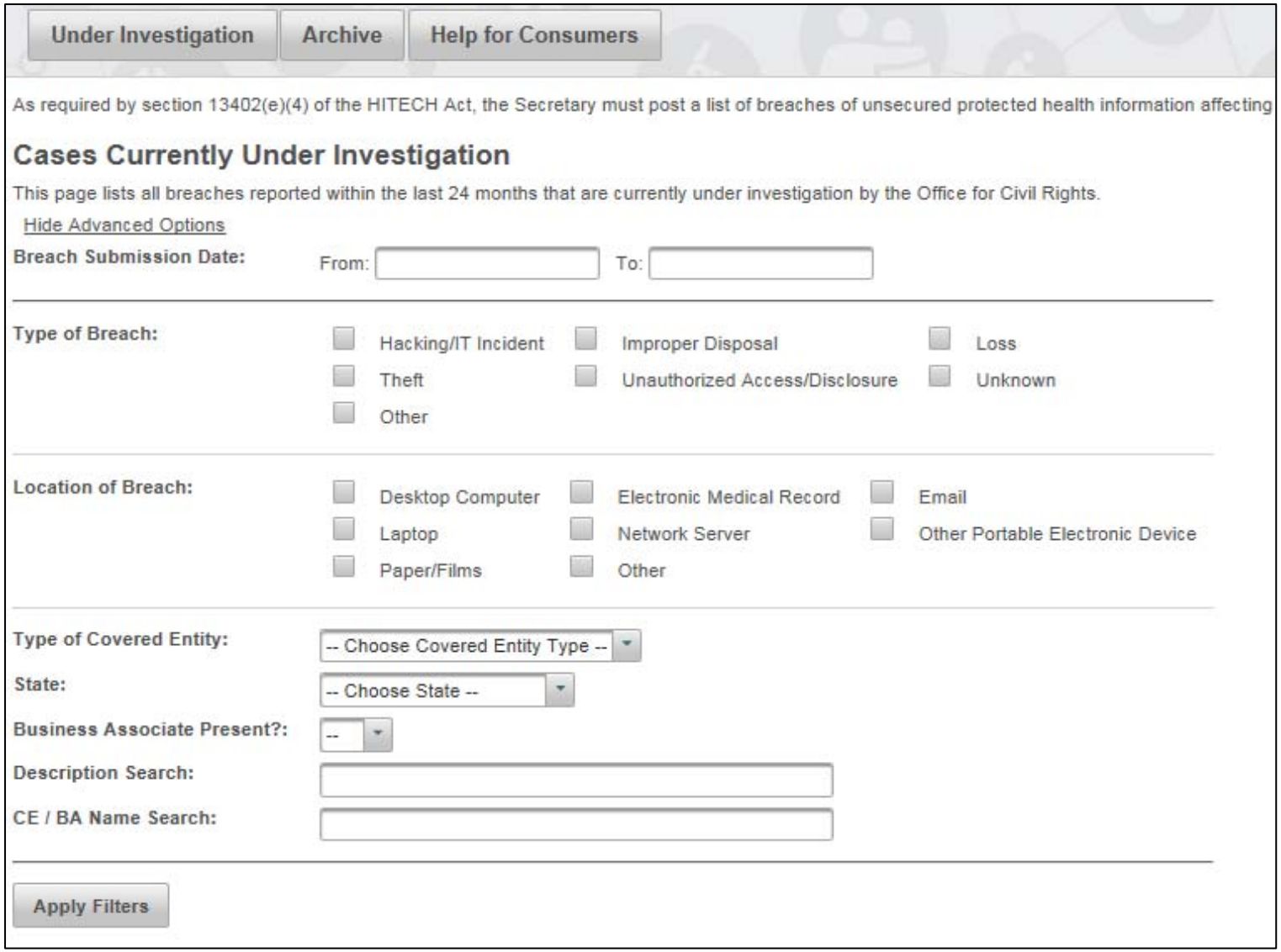
- The revised web tool still publicly reports all breaches involving 500 or more records – but presents that information in a more understandable way.
- The HBRT also features improved navigation for both those looking for information on breaches and ease-of-use for organizations reporting incidents.
- The tool helps educate industry on the types of breaches that are occurring, industry-wide or within particular sectors, and how breaches are commonly resolved following investigations launched by OCR, which can help industry improve the security posture of their organizations.

Key Improvements



https://ocrportal.hhs.gov/ocr/breach/breach_report.jsf

Advanced Search Functions

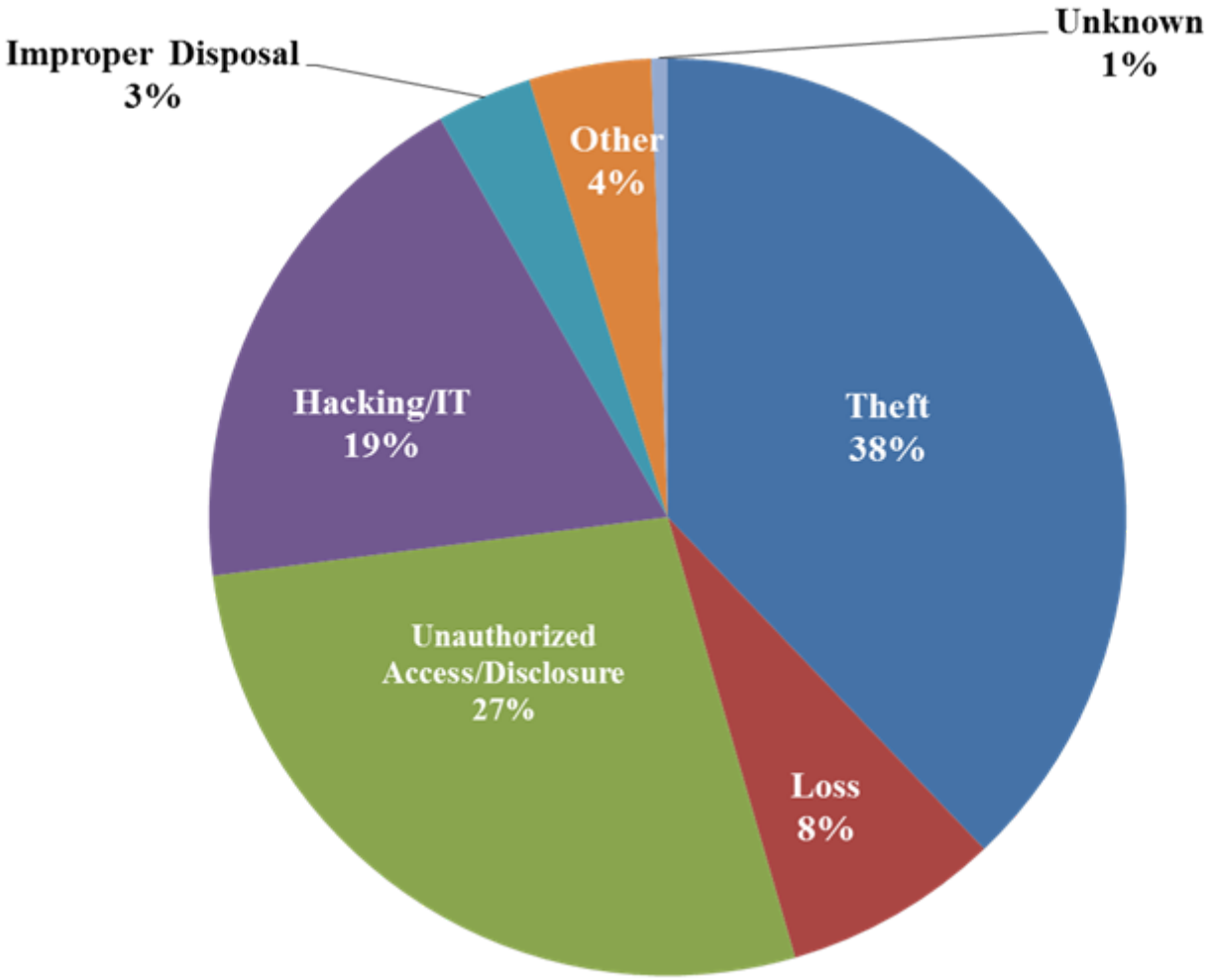


Latest Breach Reporting Highlights

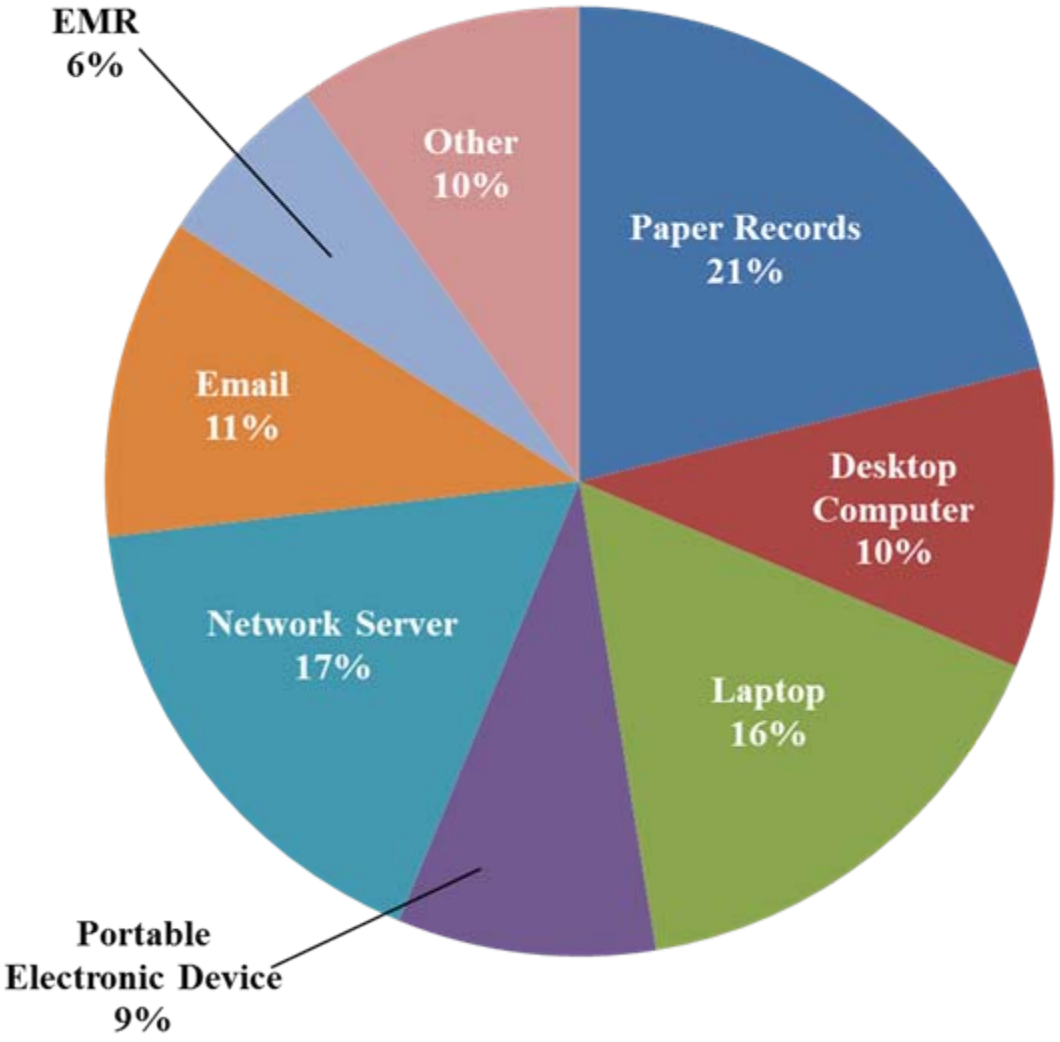
September 2009 through January 31, 2018

- Over 2,200 reports involving a breach of PHI affecting 500 or more individuals
- Type:
  - Theft makes up 38% of large breaches
  - Hacking/IT now accounts for 19% of incidents
- Location:
  - Laptops and other portable storage devices account for 25% of large breaches
  - Paper records are 21% of large breaches
- Individuals affected are approximately 177,065,101
- Over 316,000 reports of breaches of PHI affecting fewer than 500 individuals

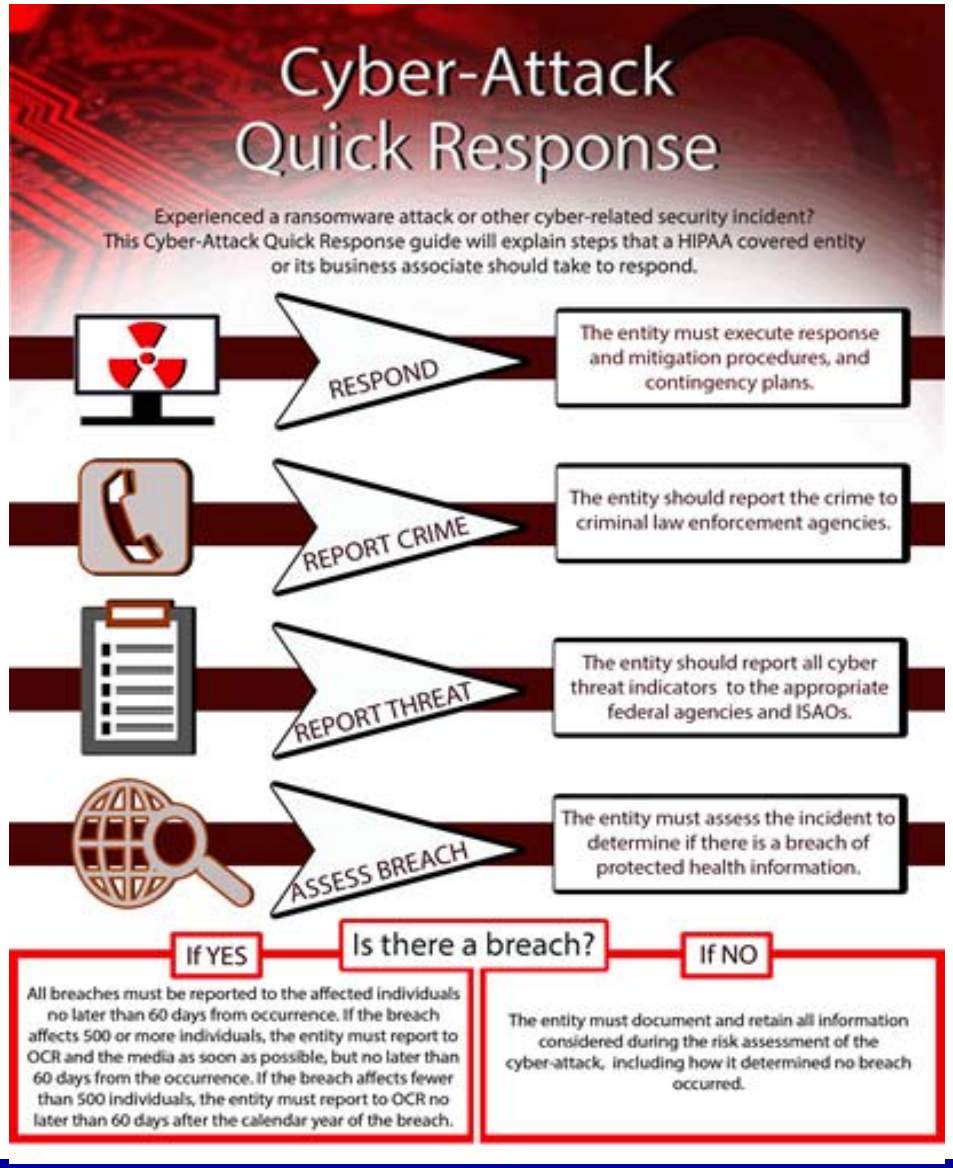
500+ Breaches by Type of Breach from September 2009 through January 31, 2018



500+ Breaches by Location of Breach from September 2009 through January 31, 2018



Cyber Security Guidance Material



Ransomware

- Following the May 2017 WannaCry ransomware attack, HHS reminded organizations to adhere to the OCR ransomware guidance as part of strong cyber hygiene.

- OCR presumes a breach in the case of a ransomware attack.

FACT SHEET: Ransomware and HIPAA

https://www.hhs.gov/sites/default/files/RansomwareFactSheet.pdf

"Maintaining frequent backups and ensuring the ability to recover data from backups is crucial to recovering from a ransomware attack."

Cybersecurity Resources

- Newsletters http://www.hhs.gov/hipaa/for-professionals/security/guidance/index.html
- Health Information Technology Portal http://hipaaQsportal.hhs.gov
- Medscape *http://www.medscape.org/viewarticle/876110*

For More Information

http://www.hhs.gov/hipaa

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