



Next Generation Health Care Privacy and Security Issues

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My Presentation

- Lots of regulatory, legislative, business and technology issues for the health care industry
- It was a busy year, focused on compliance with the new HITECH/HIPAA rules
- Now that the dust has settled a bit, what's happening next on health care privacy and security?
- This session will identify and discuss some upcoming regulatory developments and some issues that need tackling

Key Topics

- Major ongoing issues under the HIPAA/HITECH Rules
- Privacy and Security issues Outside the HIPAA Framework
- Privacy and Data Security outside of HIPAA affecting those inside of HIPAA

Key Remaining HIPAA Challenges

- **Breach Notification**
- The new rules are continuing to create confusion
- The answer will not always be clear – presumption is notice.
- Act quickly, mitigate broadly and be smart

Key Remaining HIPAA Challenges

- **Breaches Generally**
- Way too many breaches continue to happen
- Make sure you are reviewing your overall security practices
- Pay close attention to problems faced by others
- Encrypt anywhere you can

Insider Access issues

- One key area of challenge for all health care companies – mis-use of access by employees
- This is a real and significant ongoing issue
- Close down access where you can
- But increase your controls where you can't

Key Remaining HIPAA Challenges

- **Business Associate Contracting**
- Make sure you have closed all the loops on this
- Be smart about these vendors – don't favor simplicity too much
- Not all vendors are created equal

Key Remaining HIPAA Challenges

- **Enforcement**
- Where is OCR going with enforcement?
- No noticeable increase to date
- Investigations are more thorough and more burdensome
- Increasing pressure to do more

Key Remaining HIPAA Challenges

- **Business Associate Enforcement Issues**
- No real enforcement involving business associates yet
- A real challenge for OCR – how to treat companies who deal with much more than health care
- Watch this carefully

Next Issues - Regulatory

- The HIPAA Accounting Rule
- A significant holdover from HITECH
- A slower timetable (some of us hope for indefinite delay)

The Accounting Rule

- The Tiger Team from ONC has recommended a slow, measured testing of viable accounting concepts for EHRs.
- They rejected the viability of the proposed access report
- BUT they recommended a revision to the Security Rule that would require most of the same work.

The Accounting Rule

- So, what's next?
- No one knows.
- This is still a substantial test case – will the government require enormous burden and cost, for a balance with limited and vague goals?
- How will the tests and Security Rule play out?

The FTC and Health Care

- The Lab MD case
- FTC used general security enforcement approach, to go after what seems to be a HIPAA covered entity
- FTC role in general is under challenge (Wyndham and LabMD)
- What are they doing with Lab MD?

The FTC

- Mobile applications
- FTC is reviewing potential rules for mobile devices and applications
- Health care is clearly a part of this review
- Mobile applications can be “in” and “out” of HIPAA – watch this carefully.

Mobile Devices/BYOD

- FTC review is also a reminder of the need for a BYOD/Mobile device policy
- If you do not have one yet, that means you are permitting mobile devices with your data
- This is a big deal because it is real and growing right now

A Broader HIPAA?

- Mobile application debate highlights “limits” of HIPAA
- Idea of “covered entities” and “business associates” misses whole segments of health care industry that are consumer directed or otherwise outside of HIPAA
- More attention being paid to this gap

Cybersecurity

- A big deal for the administration and generally
- Focus is on critical infrastructure and national security, rather than security of personal data
- But health care is clearly part of “critical infrastructure”

Cybersecurity

- The Administration's activity may focus on information sharing about risks, rather than specific requirements
- But watch how this intersects with HIPAA
- And it is a good reminder of the need for better overall security practices, independent of patient data

New Legislation

- The Cyber debate AND the Target breach are leading to new (and revived) proposals about data security and data breach notification
- Combination of target breach and possible negative impact on FTC enforcement increases likelihood of new federal legislation

New Legislation - Questions

- Will health care covered entities be carved out of any legislation?
- Will business associates?
- Will these carve outs be effective?
- Will they be desirable?

Insurance Exchange Issues

- The fights and problems with the insurance exchange are dominating the overall health care debate
- Security of the exchanges is now a very hot topic (at least for politics) Watch how this debate affects those “involved” in the exchanges and how it may spill over to other situations

Health Information Exchanges

- The HIE movement is proceeding largely outside of the core HIPAA discussion
- HIEs have been bogged down in privacy/security debates (and business model searches)
- State law is the issue more than HIPAA
- Is there any reasonable fix in sight?

Conclusions

- Lots happening, both in and out of HIPAA
- Companies need to be thinking about a lot more than HIPAA
- Will there be a convergence (a) through a broader HIPAA or (b) health care data being covered through other vehicles?

Questions?

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