

CLIENT ALERT: September 19, 2008

HHS ISSUES FIRST HIPAA CORRECTIVE ACTION PLAN

HHS recently entered into a settlement agreement with a large health care system, Providence Health & Services (“Providence”), as a result of alleged HIPAA violations. The agreement, and the comprehensive Corrective Action Plan (“CAP”) that it mandates, are the first of their kind.

Although the magnitude of the security breach was significant in the Providence case, the type of breach Providence experienced is relatively common – the removal from a health care facility of laptops, optical discs and backup tapes containing unencrypted ePHI. In Providence’s case, such laptops etc. were lost or left in an employee’s personal vehicle and stolen, compromising the privacy of health information for over 386,000 Providence patients.

Pursuant to the settlement agreement, in order to avoid the imposition of a civil monetary penalty, Providence must pay a \$100,000 fine and implement the CAP. The CAP requires Providence, for the next three years, to:

- create and submit certain policies and procedures (“P&P”) to address the breaches;
- implement the P&P and submit proof of implementation;
- distribute the P&P to anyone involved in ePHI;
- conduct trainings at least annually regarding ePHI security; and
- conduct quarterly unannounced reviews to assess compliance.

Note that in addition to this new level of federal enforcement, such security breaches also require compliance with the new Massachusetts security breach and data security laws, codified as Chapters 93H and 93I of the General Laws. Please consult our recent articles for additional information about the requirements of Chapters 93H and 93I, available in the “News” section of our website.

To view the HHS press release and additional information concerning the CAP, please visit:

<http://www.hhs.gov/news/press/2008pres/07/20080717a.html>

<http://www.hhs.gov/ocr/privacy/enforcement/resolution.html>

To view the CAP, please visit: <http://www.dhhs.gov/ocr/privacy/enforcement/agreement.pdf>

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