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Newsletter

Healthcare Info.

August 2007

Don't become lax on HIPAA privacy rules

In the course of the nearly two-year period leading up to the effective date of the HIPAA Privacy Rule much was written on raising the awareness of healthcare provider staffs and bringing them into compliance with the law. As a result of these efforts, when a potential issue arose it was, more likely than not, brought to the attention of the provider's privacy officer who then dealt with it.

As time has passed, the critical emphasis which providers have placed on HIPAA-driven privacy initiatives may have waned. Over the last four years, no fines have been imposed by HHS Office of Civil Rights ("OCR"), the entity charged with enforcing the Privacy Rule, this in spite of the fact that over 20,000 complaints have been received. The vast majority of those complaints were addressed by outright dismissal or through agency efforts to work toward voluntary compliance. The result is that providers may now find themselves experiencing a feeling of false security. BE CAREFUL!!

Providers should not become complacent with respect to HIPAA privacy compliance. Complaints will continue to be filed and OCR will continue to investigate them. The failure to have the necessary procedures and written policies in place, the failure to train and to refresh training on a regular basis (and to document such activities), the failure to bring issues and question to the attention of the privacy officer and the failure to investigate complaints and impose sanctions can lead to administrative problems under HIPAA.

Were this not enough, a failure to pay detailed attention to the Privacy Rule may also serve as a basis for potential claims under common law. Providers should regularly review their HIPAA privacy programs and document their training and compliance efforts. Making these efforts will be far easier and less costly than trying to remedy a problem after the fact.

The Healthcare Practice Group at Robison, Curphey & O'Connell provides a wide range of legal services to healthcare providers in Northwest Ohio and Southeastern Michigan. Our attorneys – one of whom is a registered nurse and former health risk manager; and legal assistants – one of whom is also a registered nurse, provide services to our clients in the defense of medical malpractice cases, risk-management activities, medical staff matters, and numerous other business-related healthcare matters including, practice formation and dissolution, governance, ownership transitions, mergers, affiliations, dispute resolution, HIPAA privacy compliance, physician recruitment, fraud and abuse and Stark compliance, managed care contracting, employment issues, real estate issues, hospital-physician joint ventures, hospital-practice contracting and information systems contracting.

EEOC focuses on compliance with ADA

In an apparent signal that it will focus on healthcare providers' compliance with the Americans with Disabilities Act (ADA), the Equal Employment Opportunity Commission (EEOC) has recently issued "Questions and Answers about Health Care Workers and the Americans with Disabilities Act", which can be found at www.eeoc.gov\facts\health_care_workers.html.

The ADA is a complicated law with ambiguous and shifting definitions. While a healthcare employer should always be concerned about the requirements of ADA, the issuance of this document by the EEOC suggests that healthcare employers may be subject to more governmental scrutiny over ADA compliance. Accordingly, healthcare employers may be wise to revisit this area.

While the ADA applies to employers with 15 or more employees, the Ohio statute prohibiting discrimination based on disability, which applies the same legal principles as ADA, applies to employers with four or more employees.

Has tort reform worked?

The Lucas County Clerk of Court data reflects that medical malpractice suit filings have dropped drastically since enactment of Tort Reform which was effective in 2003.

YEAR	CASES FILED
2000	174
2001	189
2002	164
2003	190 Tort Reform Effective
2004	145
2005	133
2006	85
2007	33 (through 4/30/07)

Notably, RCO has been involved in the defense of roughly one-third of all cases filed in Lucas County since 2000.

This document is intended to provide general information for clients or interested individuals. The information contained herein is not intended to be and should not be construed as legal advice. Please consult your attorney for specific advice regarding your situation since every circumstance should be considered and evaluated separately.

Do you have a license for your waiting room music?

One of our clients was recently approached by BMI, one of the licensors of music copyrights, about a license for music played in its facility, including on televisions in waiting rooms. The initial reaction was disbelief. However, the music copyright laws are very broad and licenses are generally required for playing any music other than "private listening rights".

The music industry construes "private listening rights" as listening at home or in a car. It is the music industry's position that playing music at a party or to other groups of people requires a copyright license. Accordingly, the music industry is taking the position that any rebroadcast of music, whether from a radio, television, compact disc, phonograph record, or other media, outside of "private listening rights", must have a copyright license. There are a number of limited exceptions to the copyright law, but the retransmission of any music beyond "private listening rights" could be subject to a charge of copyright infringement.

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