

## HHS Penalizes for Gap in HIPAA Policies; More Enforcement to Come

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For the second time this year, the Department of Health & Human Services has penalized a health care organization for failing to adhere to HIPAA. This most recent incident, coupled with comments from HHS officials, indicate that failing to have thorough HIPAA policies and procedures may cost you.

The Department of Health & Human Services has announced a \$1 million settlement with Massachusetts General Hospital for failure to have policies and procedures governing the removal of patient health information from the hospital. We also recently reported on a \$3.5 million HIPAA enforcement action against Cignet Health for failing to grant patients access to their records. More details about the Cignet case are available [here](#).

In the Massachusetts General case, the HHS alleged that a hospital employee took home records at the end of the day to work on them at home. The employee left the records on a subway train the next morning and they were never recovered. The records contained names of patients, birth dates, medical record numbers, health insurers and policy numbers, diagnoses and names of health care providers.

In response to a complaint from one of the patients whose records were lost, HHS launched an investigation. HHS found that the hospital had no policies or procedures governing the removal of patient information from the hospital, such as policies under which records could be taken from the hospital, the types of records that could be taken or the protections such records must be given. Because of this gap, HHS settled its investigation with a \$1 million penalty. The hospital also agreed to a three-year compliance reporting obligation.

Speaking at the National HIPAA Summit last week, HHS Office for Civil Rights (OCR) officials said we can expect more enforcement actions that result in fines. OCR has created a new deputy director position to oversee enforcement. Under the HITECH amendments to HIPAA, OCR may now keep the dollars it collects in fines to help fund enforcement. As part of its increased enforcement, OCR will be conducting training sessions for state Attorneys Generals, who now also have the right to enforce HIPAA. OCR also hopes to pilot a HIPAA audit program before the end of the year.

If you have questions about HIPAA compliance, please contact Norbert F. Kugele ([nkugele@wnj.com](mailto:nkugele@wnj.com) or 616.752.2186) or any other member of the HIPAA Task Force at Warner Norcross & Judd.