



pulse

HHS Report: Record Settlements for HIPAA Violations Reached in 2018

Last year marked a record period in Health Insurance Portability and Accountability Act (HIPAA) enforcement activity, according to a report from The Office for Civil Rights (OCR) at the U.S Department of Health and Human Services (HHS.)

In 2018, OCR settled 10 cases and was granted summary judgment in a case before an Administrative Law Judge, together totaling \$28.7 million from enforcement actions, according to a news release from HHS. The 2018 total topped the previous record in 2016 of \$23.5 million by 22 percent.

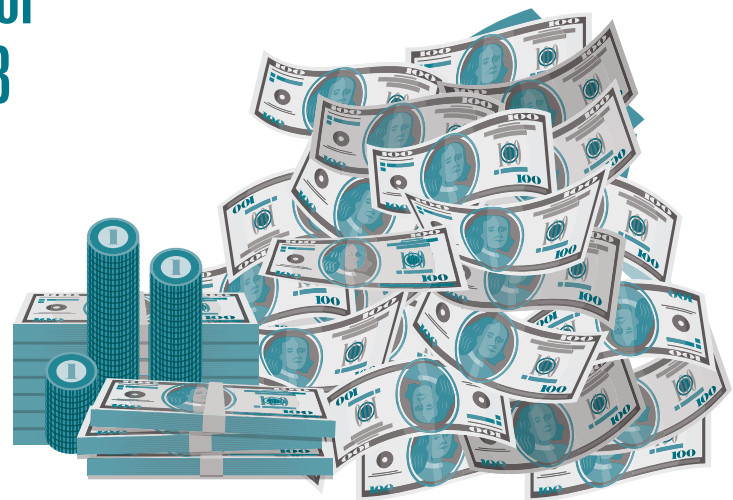
In addition, OCR also achieved the single largest individual HIPAA settlement in history of \$16 million with Anthem, Inc., representing a nearly three-fold increase over the previous record settlement of \$5.5 million in 2016.

The record reached in 2018 included a \$3 million settlement with Cottage Health for potential violations of the HIPAA Rules. The provider also adopted a substantial corrective action plan. OCR received two notifications from Cottage Health regarding breaches of unsecured electronic protected health information (ePHI) affecting over 62,500 individuals, one in December 2013 and another in December 2015, according to the news release.

OCR's investigation revealed that Cottage Health failed to conduct an accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of the ePHI; failed to implement security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level; failed to perform periodic technical and non-technical evaluations in response to environmental or operational changes affecting the security of ePHI; and failed to obtain a written business associate agreement with a contractor that maintained ePHI on its behalf.

Additional settlements and judgments for HIPAA Violations in 2018, according to HHS, include:

- In January 2018, OCR settled for \$100,000 with Filefax, Inc., a medical records maintenance, storage and delivery services provider. OCR's investigation found that Filefax impermissibly disclosed protected health information (PHI) by leaving the PHI in an unlocked truck in the Filefax parking lot, or by granting



permission to an unauthorized person to remove the PHI from Filefax and leaving the PHI unsecured outside the Filefax facility.

- In June 2018, an HHS Administrative Law Judge ruled in favor of OCR and required The University of Texas MD Anderson Cancer Center (MD Anderson) to pay \$4.3 million in civil money penalties for HIPAA violations. OCR investigated MD Anderson following three separate data breach reports in 2012 and 2013 involving the theft of an unencrypted laptop from the residence of an MD Anderson employee and the loss of two unencrypted universal serial bus (USB) thumb drives containing the unencrypted ePHI of over 33,500 individuals.

continued on page 2

COMPLIANCE

Senator Chuck Grassley to IRS: How Many Hospitals Comply with 501 (r) Requirements?

In an ongoing effort to evaluate nonprofit hospitals required to follow Section 501 (r) of the Internal Revenue Code focused on charity care, U.S. Sen. Chuck Grassley, R-Iowa, has requested data on the number of hospitals that are in compliance with the requirements from the Internal Revenue Service in the last year.

Hospitals subject to 501 (r) must complete a community health needs assessment, meet financial assistance policy requirements, adhere to limitations on charges and follow billing and collection practices.

The IRS' 501 (r) requirements for nonprofit hospitals, in effect on Dec. 29, 2015, marked a complex change for the health care collections industry, health care providers, patients and more.

Grassley has been a watchdog for the program for several years, prompting a recent letter to IRS Commissioner Charles Rettig with the request for information on nonprofit hospitals' compliance.

Specifically, Grassley is seeking information about whether tax-exempt hospitals are meeting the statutory requirements laid out in section 501 (r) of the Internal Revenue Code, according to a news release.

"Making sure that tax-exempt hospitals abide by their community benefit standards is a very important issue for me," he said.

In February 2018, Grassley and former Senate Finance Committee Chairman Orrin Hatch, R-Utah, pressed the IRS for information on enforcement practices and compliance data on nonprofit hospitals. Grassley has continually urged greater compliance among nonprofit hospitals.

On an annual basis, according to Grassley's letter, the IRS reviews about one-third of the approximately 3,000 tax-exempt hospitals for compliance.

The letter requests an update on those reviews, including those that were resolved upon contact with the hospital, required a compliance check or follow-up

investigation as well as how many hospitals were not in compliance with these specific requirements:

- Community Health Needs Assessment
- Financial Assistance Policy Requirements
- Requirements on Charges Billed to Patients
- Billing and Correction Policies

Read more on Senator Grassley's request here: <https://bit.ly/2GOyWlf>

What is your experience as a hospital required to comply with 501 (r) or as a collection agency working on revenue cycle management with these hospitals? Share your thoughts with ACA International's Communications Team at comm@acainternational.org, Attn: Katy Zillmer.

Harry Strausser, ACA International's Education and Membership Development Director, and Irene Hoheusle, vice president of collections and education at Account Recovery Specialists Inc., recently discussed health care collections trends, including 501 (r), in an episode of ACA Cast. Read more on page 3.

Record Settlements for HIPAA Violations *cont. from page 1*

- In September 2018, OCR announced that it has reached separate settlements totaling \$999,000, with Boston Medical Center (BMC), Brigham and Women's Hospital (BWH), and Massachusetts General Hospital (MGH) for compromising the privacy of patients' PHI by inviting film crews on premises to film an ABC television network documentary series, without first obtaining authorization from patients.
- In October 2018, Anthem, Inc. also paid \$16 million to OCR and agreed to take substantial corrective

action to settle potential violations of the HIPAA Rules after a series of cyberattacks led to the largest U.S. health data breach in history. Anthem filed a breach report after discovering cyber-attackers had gained access to their IT system via an undetected continuous and targeted cyberattack for the apparent purpose of extracting data, otherwise known as an advanced persistent threat attack. After filing their breach report, Anthem discovered cyber-attackers had infiltrated their system through phishing emails sent to an Anthem subsidiary after at least one

employee responded to the malicious email and opened the door to further attacks. OCR's investigation revealed that between Dec. 2, 2014 and Jan. 27, 2015, the cyber-attackers stole the ePHI of almost 79 million individuals, including names, Social Security numbers, medical identification numbers, addresses, dates of birth, email addresses, and employment information.

See more on 2018 HIPAA Settlements and Fines in Data Watch.

More information: <https://bit.ly/2EC3YKX>

INSURANCE

How Insurance Coverage Impacts Consumers' Ability to Pay

New data on health insurance in the U.S. from The Commonwealth Fund reflects quality of coverage and the impact of coverage levels on consumers' ability to pay medical bills and access care.

Among the findings in the Biennial Health Insurance Survey, The Commonwealth Fund reports that consumers who are "underinsured," meaning they carry high health plan deductibles and out-of-pocket medical expenses compared to their income, are more likely to have challenges paying their medical bills or avoid medical care because of the expense.

Twenty-nine percent of insured adults qualified as "underinsured" in 2018, an increase from 23 percent in 2014.

"U.S. working-age adults are significantly more likely to have health insurance since the ACA [Affordable Care Act] became law in 2010. But the improvement in uninsured rates has stalled. In addition, more people have health plans that fail to adequately protect them from health care costs, with the fastest deterioration in cost protection occurring in employer coverage," said Sara Collins, lead author of the study and The Commonwealth Fund vice president for health care coverage and access, in a news release.

The survey offers a big-picture look at consumers' health insurance, including the quality of their coverage, in 2018.

Key findings in the survey include:

- Twenty-eight percent of U.S. adults who have health insurance through their employer were underinsured in 2018, an increase from 20 percent in 2014.
- Consumers who purchased plans on their own through the individual market or the marketplaces were the most likely to be underinsured, with 42 percent reporting a lack of adequate coverage in 2018.
- Forty-one percent of underinsured adults reported they held off on care they needed because of the expense, compared to 23 percent of consumers with "adequate insurance coverage."

And, 47 percent of underinsured adults said they had medical bill and debt problems, compared to 25 percent of consumers who are not underinsured reporting these challenges.

More information: <https://bit.ly/2GAEZsT>

ACA Cast: Health Care Collections

Health care collections is a multi-faceted business requiring added sensitivity and compliance when talking with consumers and revenue cycle management expertise.

Harry Strausser, ACA International's education and membership development director, and Irene Hoheusle, vice president of collections and education at Account Recovery Specialists Inc.,

recently discussed health care collections trends, including 501 (r), in an episode of ACA Cast. Visit <https://www.acainternational.org/acacast> to access the latest episode.

NEWS & NOTES

Payment Models at Rural Hospitals

The American Hospital Association, through its "Rural Advocacy Agenda" says rural hospitals should have more access to participate in bundled payment models and other alternative payment options, RevCycleIntelligence reports. "Specifically, the AHA is urging the industry to create voluntary bundled payment models for rural hospitals. Bundled payments generally pay providers a single, comprehensive payment for all the services involved in an episode of patient care ..."

<https://bit.ly/2I3vogm>

Health Care Collection Education

Earning ACA's Healthcare Collection Management designation requires participants to complete three ACA Core Curriculum courses—Data Security and Privacy, Ethical and Professional Collections and Health Care Collection Management—as well as the HCM Capstone Assessment. Visit our events calendar (<https://www.acainternational.org/events>) for a complete list of upcoming seminars required to complete the designation. More information: <https://www.acainternational.org/education/designations#hcm>

We Want To Hear From You

Pulse is published for ACA health care collection agencies to provide current industry information for health care providers. ACA International welcomes article ideas and submissions for consideration in *Pulse* to the Communications Department at comm@acainternational.org.

For more health care collections news, visit ACA's Health Care Collections page at www.acainternational.org/pulse.

datawatch



is a monthly bulletin that contains information important to health care credit and collection personnel. Readers are invited to send comments and contributions to:

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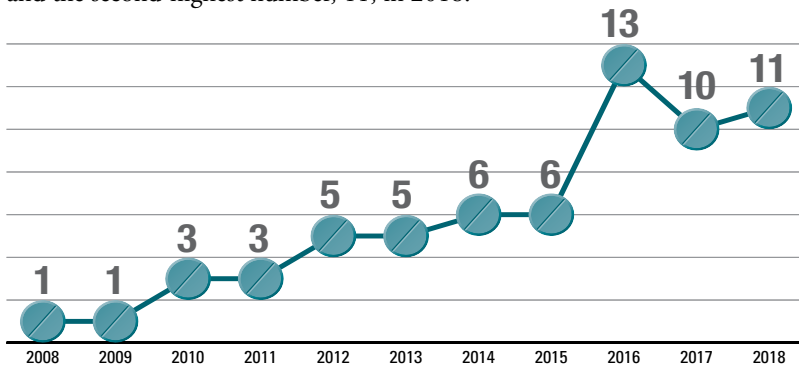
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HHS Office for Civil Rights HIPAA Penalties (2008-2018)

As reported on page 1, 2018 was a record year for HIPAA enforcement. This graph shows the number of penalties per year dating back to 2008, when there was just one. The number has overall increased since then with a high of 13 in 2016, followed by 10 in 2017 and the second-highest number, 11, in 2018.



Source: *HIPAA Journal* <https://www.hipaajournal.com/summary-2018-hipaa-fines-and-settlements/>