

HEALTH LAW

Update

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

HIPAA Enforcement Redux: HHS Announces First-Ever "Resolution Agreement" for Potential HIPAA Violations

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In a Health Law Update published last month,¹ we summarized recent data regarding enforcement of the HIPAA Privacy Rule. Now we want to report briefly on a development showing that, as the number of HIPAA complaints steadily increases each year, the government is also stepping up the scope and intensity of its enforcement efforts. The United States Department of Health and Human Services ("HHS") announced yesterday that it had entered into a "Resolution Agreement," the first of its kind, with Seattle-based Providence Health & Services ("Providence") to settle potential violations of HIPAA's Privacy and Security Rules.²

In the agreement, Providence agrees to pay \$100,000 and to implement a detailed "Corrective Action Plan" to ensure that it will appropriately safeguard identifiable electronic patient information against theft or loss. The agreement relates to several incidents in which backup tapes, optical disks, and laptops, all containing unencrypted electronic protected health information (PHI), were removed from Providence premises and were left unattended. In one of these incidents, backup tapes and optical disks were left unattended overnight in the personal vehicle of an employee and were stolen.

HHS notes that the Providence agreement is the first time HHS has required a Resolution Agreement from a covered entity. A Resolution Agreement is a contract signed by HHS and a covered entity (similar to a Corporate Integrity Agreement required by the Office of Inspector General of HHS for potential fraud and abuse violations) in which the covered entity agrees to perform certain obligations (e.g., staff training) and make reports to HHS for a period of years, typically three years. During the period, HHS monitors the compliance of the covered entity with the obligations it has agreed to perform.

¹ Health Law Update, "Enforcing the HIPAA Privacy Rule: Trends, Stats and Issues," available at <http://www.bassberry.com/communicationscenter/newsletters> (June 11, 2008).

² 45 C.F.R. Parts 160 and 164

In Providence's case, the Resolution Agreement contains a "robust" Corrective Action Plan requiring: revision of policies and procedures regarding physical and technical safeguards (e.g., encryption) governing off-site transport and storage of electronic media containing PHI, subject to HHS approval; training workforce members on the safeguards; conducting audits and site visits of facilities; and submitting compliance reports to HHS for a period of three years. If you have any questions regarding this Health Law Update, please contact one of the attorneys in our Healthcare Industry Practice Area listed on the following page.

Bass, Berry & Sims Healthcare Attorneys

H. Stanford Adams, Jr.
(615) 742-7775
sadams@bassberry.com

Starr Brown
(615) 742-6530
sbrown@bassberry.com

Pooneh Ghiassi
(615) 742-7782
pghiassi@bassberry.com

Angela Humphreys
(615) 742-7852
ahumphreys@bassberry.com

Seth A. Killingbeck
(615) 742-7707
skillingbeck@bassberry.com

Claire F. Miley
(615) 742-7847
cmiley@bassberry.com

Shannon Pinkston
(615) 742-7727
spinkston@bassberry.com

Scott B. Shanker
(901) 543-5932
sshanker@bassberry.com

Krista L. Thornton
(615) 742-7734
kthornton@bassberry.com

H. Lee Barfield, II
(615) 742-6202
lbarfield@bassberry.com

Mary Beth Fortugno
(615) 742-7739
mfortugno@bassberry.com

Anna Grizzle
(615) 742-7732
agrizzle@bassberry.com

Clevonne M. Jacobs
(615) 742-7769
vjacobs@bassberry.com

David King
(615) 742-7890
dking@bassberry.com

T. Scott Noonan, Co-Chair
(615) 742-6273
stnoonan@bassberry.com

Cynthia Y. Reisz
(615) 742-6283
creisz@bassberry.com

Catherine J.B. Sloan
(615) 742-7789
csloan@bassberry.com

Leigh Walton, Co-Chair
(615) 742-6201
lwalton@bassberry.com

Philip F. Berg
(615) 742-7908
pberg@bassberry.com

Valere B. Fulwider
(615) 742-7742
vfulwider@bassberry.com

Elisa E. Harris
(615) 742-6553
eharris@bassberry.com

J. James Jenkins, Jr.
(615) 742-6236
jjenkins@bassberry.com

Leslie Maclellan
(615) 742-7818
lmaclellan@bassberry.com

Brenda N. Phillips
(615) 742-6237
bnphillips@bassberry.com

Brian D. Roark
(615) 742-7753
broark@bassberry.com

Danielle M. Sloane
(615) 742-7763
dsloane@bassberry.com

Elizabeth S. Warren
(615) 742-7719
ewarren@bassberry.com

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315 Deaderick Street • Suite 2700 • Nashville, TN 37238-3001 • (615) 742-6200
The Tower at Peabody Place • 100 Peabody Place, Suite 900 • Memphis, TN 38103-3672 • (901) 543-5900
1700 Riverview Tower • 900 S. Gay Street • Knoxville, TN 37902 • (865) 521-6200