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HIPAA Breach Reporting

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The World's Biggest Data Breaches

- <http://www.informationisbeautiful.net/visualizations/worlds-biggest-data-breaches-hacks/>

Today's Topics

- Determining whether there is a reportable breach under HIPAA
- Deciding the tough calls: real-life case studies
 - Ransomware incidents
 - Hacking where no demonstrated exfiltration of data
- Handling business associate breaches

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Determining HIPAA Reporting Obligations

HIPAA Breach Notification - 45 CFR Part 164, Subpart D

"Breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI, except:

- Unintentional acquisition, access or use of PHI by a workforce member in the scope of duties – no further access or disclosure
- Inadvertent disclosure from one authorized person to another within a CE/BA – no further access or disclosure
- Disclosure of PHI where CE/BA has good faith belief that the recipient cannot retain the information

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Encryption is Key

- Encryption Safe Harbor
 - Is the PHI “secured” in accordance with the NIST standard for encryption or destruction?
 - If yes, the Safe Harbor applies and notification is not required
 - If no, Risk Assessment should be conducted to determine the probability of compromise to the PHI

Presumption of Reporting

- Any unauthorized use or disclosure of PHI/ePHI that does not meet one of the exceptions is ***presumed*** to be a “Breach” UNLESS the CE/BA can demonstrate (through a written risk assessment) that there is a “low probability that the PHI has been compromised”

Note: The term “compromise” is no longer defined

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