

HIPAA does not provide an individual right to sue for damages

Last summer, the U.S. District Court for the District of Colorado ruled that the University of Colorado Hospital Authority (University Hospital) could not sue for damages under the Health Insurance Portability and Accountability Act's (HIPAA) privacy provisions.

The Case

In October 2003, Denver Publishing Company (DPC), which publishes the Rocky Mountain News, obtained a University Hospital peer review report from an unknown source. Upon learning that DPC had a copy of the report, the University Hospital filed an action against DPC to prevent DPC from publishing any information in the report. University Hospital alleged that DPC's use of the report would violate HIPAA's requirements to keep personal health information (PHI) private.

The presiding judge denied the hospital's request for a temporary restraining order and, consequently, DPC published information from the report in newspaper articles and posted a copy of the report on its website.

In December 2003, University Hospital amended its complaint to seek damages from DPC for the publication of the report. DPC argued that University Hospital's claim should be dismissed because a private right of action (that is, an individual right to sue for damages) does not exist under HIPAA.

The judge agreed with DPC and dismissed the charge that DPC had violated HIPAA's privacy provision. He said, "[HIPAA's privacy provision] does not focus on individuals whose privacy may be at risk, but instead on regulating persons who might have access to individuals' health information." In other words, the law focuses on the entities to be regulated rather than the individuals to be protected.

If an individual thinks that his or her privacy rights have been violated by an employer, health insurance carrier or medical provider, he or she must file a complaint with the Office of Civil Rights (OCR), an agency within the U.S. Department of Health and Human Services which is responsible for enforcing HIPAA.

The OCR can assess civil or criminal penalties against those responsible for the releasing the information. Civil fines can range from \$100 per incident up to \$25,000 per year. Criminal penalties can include fines of up to \$250,000 and/or imprisonment for up to 10 years depending on the severity of the violation.

What this Means to Counties

This ruling is important to counties because it emphasizes that the OCR is responsible for regulating entities which control personal health information. As employers and health care providers, counties may possess PHI about their employees and citizens. Counties must be vigilant about controlling and limiting access to any PHI in their possession.

To be in compliance with HIPAA's privacy rules, all counties should have adopted policies and procedures to protect PHI including designating a privacy officer. Counties should also have addressed training and security issues.

Also, be aware that although individuals cannot sue for damages for the release of personal health information under HIPAA, they may be able to sue under other state and federal privacy laws.

For more information, contact CTSI at 303-861-0507.

County Technical Services, Inc.

800 Grant St., Suite 400
Denver CO 80203

303.861.0507
FAX: 303.861.2832

Technical Updates are available online at: www.ctsi.org