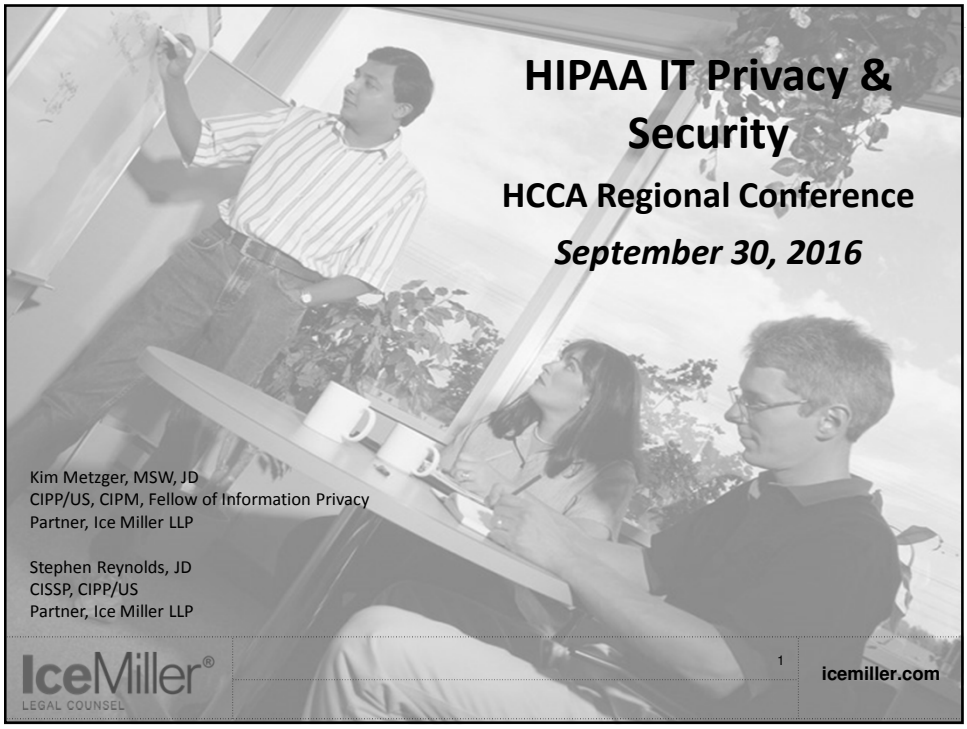

HIPAA IT Privacy & Security

HCCA Regional Conference

September 30, 2016

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Today's Topics

1. OCR Phase 2 Audits
2. Lessons from OCR Enforcements
3. Risk Analysis and Risk Management
4. Ransomware
5. Cyber Insurance
6. Implementing Guardrails – *Stopping Compliance Issues Before They Begin*

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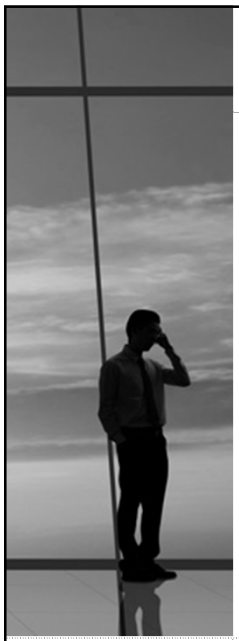

Phase 2 Audits Underway

- OCR currently desk-auditing **167 CEs**
- HIPAA Rule **requirements selected for review**
- OCR released audit schedule
- Recent OCR guidance documents

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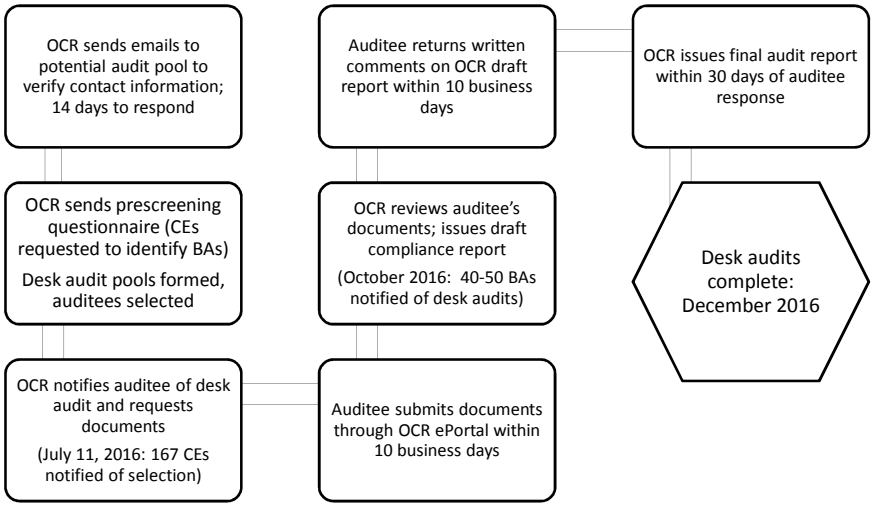
Desk Audit Flow Cycle



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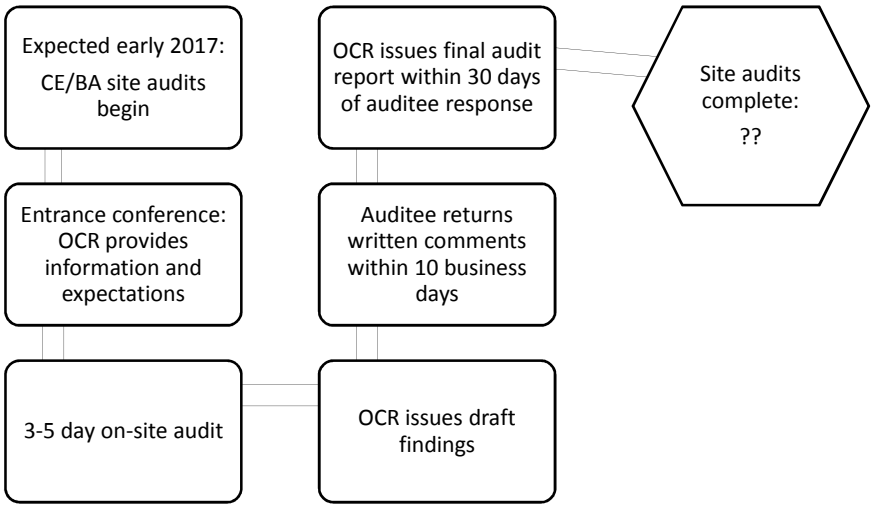
Site Audit Flow Cycle



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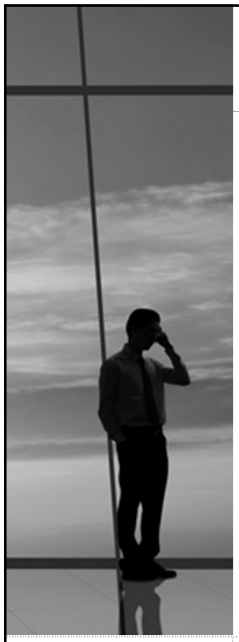


Public Postings?

- OCR does not intend to publicize auditees' identities or auditee-specific findings.
- OCR believes there is a FOIA exception, but "may" be required to disclose "audit notification letters and other information about these audits …."

Will Audits Lead to Fines/Enforcement?

- What is OCR's stated purpose for audits?*
- What is OCR's stated objective for audits?**
- But … what does OCR say about enforcement?*

** From OCR's July 13, 2016 webinar for CE desk auditees*
*** From OCR's Q&A Set*

Lessons from OCR Enforcements

Cornell Prescription Pharmacy –
April 2015 (RA/CAP and $125,000 resolution amount)

PHI disposed of in open container on CEs' premises

Lesson 1: Protect Paper

QCA Health Plan, Inc. –
April 2014 (RA/CAP and $250,000 resolution amount)

Lesson 2: Consider Encryption/Manage Offsite PHI

Lesson 3:
Perform an Enterprise-Wide Risk Analysis

NIST

HealthIT.gov

Lesson 4:
Properly Manage and Use SaaS and Cloud Storage Options

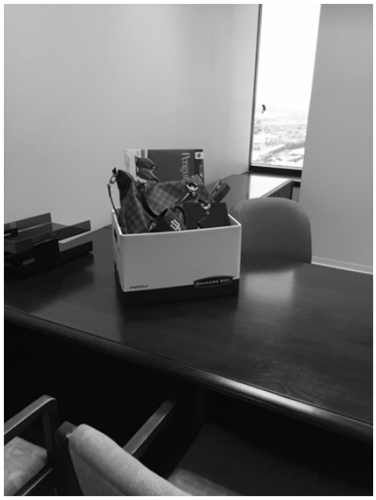
Security Rule: Ensure confidentiality, integrity, availability of ePHI CE/BA "creates, receives, *maintains, or transmits*"

St. Elizabeth's Medical Center –
June 2015 (RA/CAP and $218,000 resolution amount)

Triple-S Management Corporation –
Nov. 2015 (RA/CAP and $3.5M resolution amount)

Lesson 5: Ensure Proper Access Management

Former workforce members employed by a competitor accessed proprietary database containing ePHI (access rights not terminated upon leaving employment)



OCR'S SMALL BREACH INITIATIVE

"Initiative to more widely investigate breaches affecting fewer than 500 individuals." (August 18, 2016)

Lesson 6: Size Doesn't Matter (Much)

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Phoenix Cardiac Surgery –
April 2012 (RA/CAP, $100,000 resolution amount)

One-location, two-physician practice

"This case is significant because it highlights a multi-year, continuing failure on the part of this provider to comply with the requirements of the Privacy and Security Rules .... We hope that health care providers pay careful attention to this resolution agreement and understand that the HIPAA Privacy and Security Rules have been in place for many years, and OCR expects full compliance no matter the size of a covered entity."

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Catholic Health Care Services – *June 2016 (RA/CAP and $650,000 resolution amount)*

- First settlement directly with a BA
- BA employee's unencrypted iPhone, containing 412 individuals' "extensive" ePHI, stolen
- OCR investigation: (1) failure to perform SR risk analysis; (2) failure to implement SR risk management plan; (3) no policies/procedures addressing removal of mobile devices from premises

Lesson 7: Emphasize Access

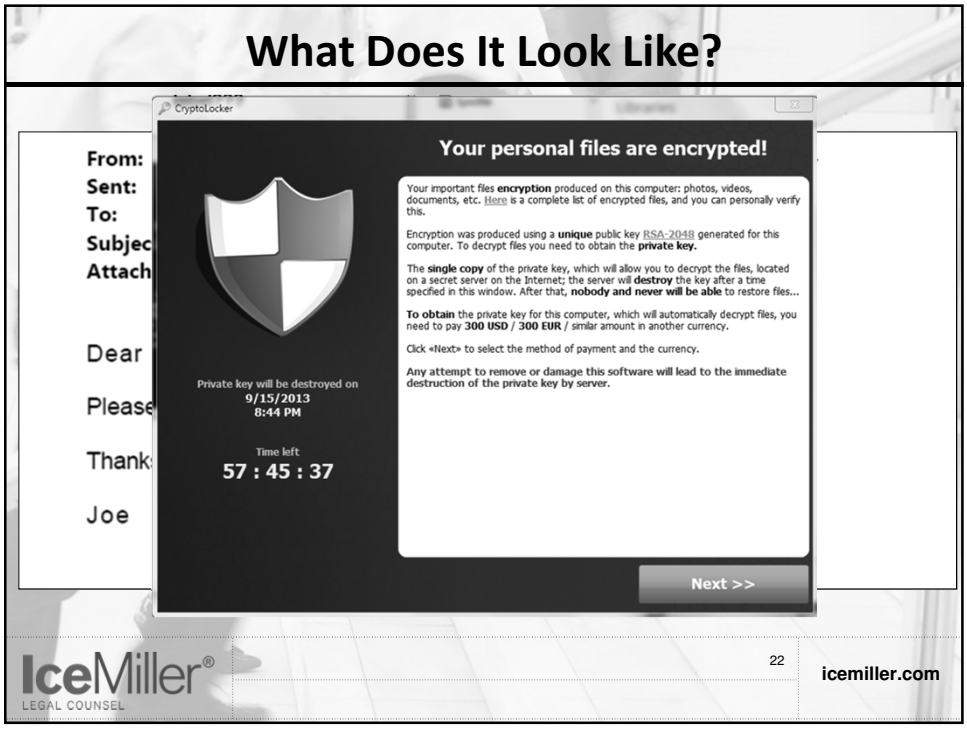
- Access Rule
- Top "Pilot Audit" finding
- 2016 OCR Guidance
- Phase 2 area of inquiry
- Document requests to Phase 2 CE desk auditees?

Risk Analysis and Risk Management

Risk Analysis/Risk Management Plan

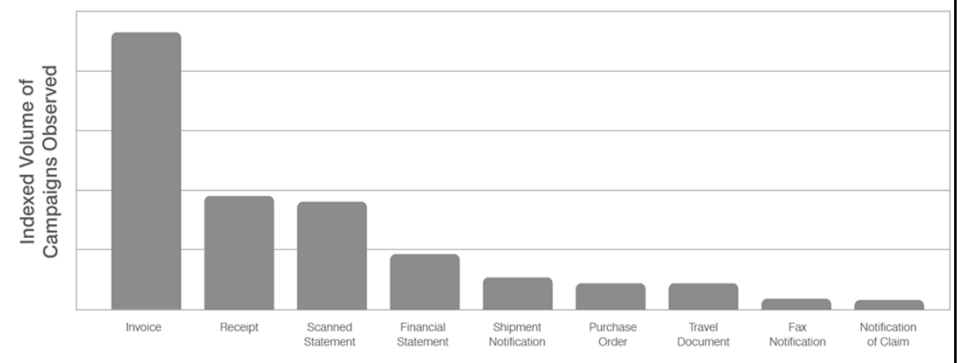
- **Risk Analysis:** "accurate and thorough assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of" PHI
- **RMP:** "security measures sufficient to reduce risks and vulnerabilities to a reasonable and appropriate level"
- Security Rule builds flexibility into RA process
- Start with a data inventory/map (location and flows)

What Does It Look Like?



What Does It Look Like?

Malware: Most Used Email Lures



Source: ProofPoint, The Human Factor 2016

How to Prevent?

Suggestions for Businesses

- Enforce an effective password policy
- Use two-factor authentication for remote access
- Use regular, out-of-band backups
- Have an incident response plan
- Protect mobile devices
- Educate employees

How to Prevent?

Suggestions for Individuals

- Do not open email messages or attachments from unknown individuals.
- Be cautious of clicking links within emails from unknown individuals.
- Implement technical safeguards.
- Think before you click!

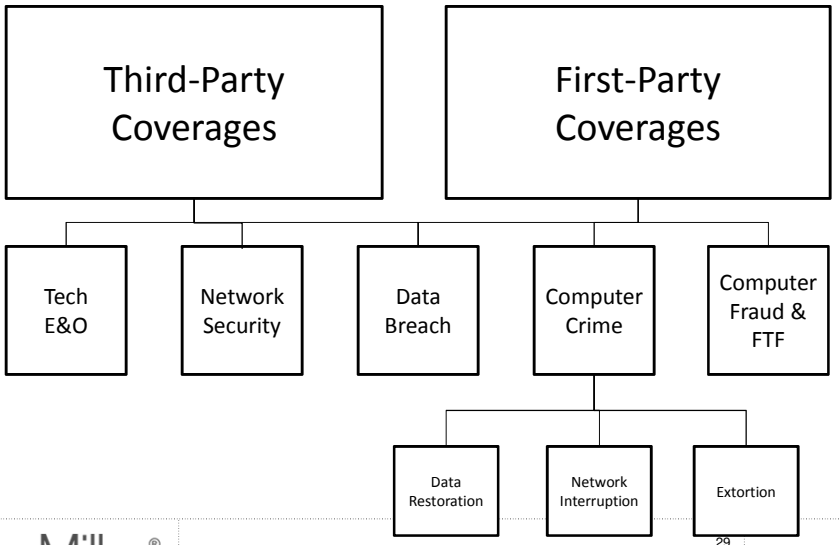
HHS FACT SHEET: Ransomware and HIPAA

- HIPAA Security Rule requires implementation of security measures to help prevent ransomware
- The HIPAA Security Rule requires policies and procedures to recover from a ransomware attack

"Unless the covered entity or business associate can demonstrate that there is a '…low probability that the PHI has been compromised,' based on the factors set forth in the Breach Notification Rule, a breach of PHI is presumed to have occurred." – OCR Fact Sheet

Cyber Insurance

Basic "Cyber" or "Tech" Insurance



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IMPLEMENTING GUARDRAILS

- Perform an enterprise-wide **risk analysis,** and follow up with an appropriate **risk management plan.**
- Mind your Ps and Qs – and **PEDs**
- Ensure individuals' **access** to their own PHI – and mind what you charge!
- **"Minimum necessary"** is maximally important: Think through role-based access and uses, disclosures, and requests.
- **Train and train again.** Changes in law, organizational structure, and risks/vulnerabilities may require immediate re-training. Document efforts.

What Can Your Organization Do Now?

1. Keep Momentum Strong: *It Doesn't Stop With Phase 2*
2. Learn From Enforcements – And Beyond:
    a. Security Management Process (RA + RMP)
    b. Portable Electronic Device Security
    c. Access Rights
    d. Business Associates
3. Ensure Buy-In:
    a. Engage C-suite and board
    b. Build culture of compliance – Keep privacy and security fresh
4. Train Your Workforce: *Issue in almost every enforcement*
5. Learn From Your Peers: *Find opportunities to connect*

Questions

Thank You!

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