

Don't Make The Same Mistake

Lessons Learned from ~~16, 17, 18, 19-20~~.....25!!!!(They keep coming) Patient Right of Access Penalties

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Meet the Presenter



Elizabeth A. Delahoussaye, RHIA, CHPS

Elizabeth Delahoussaye is Chief Privacy Officer for Ciox Health. Elizabeth has served on the AHIMA Board of Directors and was the Speaker of the House of Delegates in 2016. She has also served as a representative for THIMA on the AHIMA House of Delegates, as well as President-Elect and President for THIMA from 2008 thru 2010. Elizabeth has served on various committees at the national level with AHIMA as well, including co-chair for the AHIMA ROI Tool Kit in 2013, the AHIMA Annual Program Committee in 2014 and 2015, and AHIMA's Privacy and Security Council from 2017 to 2019. In 2013 she received the THIMA Distinguished Member Award for serving and volunteering over the years on both the state and national level. Elizabeth resides in Knoxville, Tennessee with her husband John, and her son Adam.

Lesson 1

Due diligence on OCR Technical Assistance

Poll Question:

Do you have a policy in
how you deal with
technical assistance?

YES or NO?

Lesson 1. Due diligence on OCR Technical Assistance

> First Case – Fine \$38,000

A non-profit organization received technical assistance from OCR in July 2019 but never released the requested records to the patient after receiving it. OCR received the second complaint (on the same patient) in August 2019.

> Second Case – Fine \$3,500

This facility failed to give the patient their records and OCR issued technical assistance on November 30, 2018. On February 13, 2019, OCR received a second complaint for continued noncompliance because the patient still did not get their records.

> Third Case – Fine \$25,000

On March 4, 2019, OCR received a complaint alleging the facility was not in compliance with the Privacy Rule. The complaint alleged the facility failed to provide an individual access to her protected health information (PHI). On April 12, 2019, OCR received a second complaint concerning the facility's continued noncompliance with the requirements of the Privacy Rule concerning the individual's right of access to PHI.

Lesson 1. Due diligence on OCR Technical Assistance

> Fourth Case – Fine \$10,000

In November 2017, a patient's personal representative (the patient's parent) requested his son's medical records but still had not received them in February 2018. After issuing a complaint to OCR, OCR provided technical assistance to the facility. However, in October 2018, the representative filed a second complaint since he still had not received the requested medical records. After an OCR investigation, he finally received the records in May 2019.

> Fifth Case – \$15,000

OCR launched an investigation after a complaint was received from a patient in September 2018 alleging the provider had failed to provide her with a copy of her medical records. The patient had sent a request to the specialist in July 2018, but two months later the records had still not been provided.

OCR contacted the provider and provided technical assistance on the HIPAA Right of Access and closed the complaint; however, a second complaint was received from the patient a year after the first in July 2019 claiming she had still not been provided with her medical records. OCR intervened again and the records were eventually provided to the patient in September 2020, 26 months after the initial request.

Lesson 1. Due diligence on OCR Technical Assistance

> Sixth Case – \$36,000

OCR launched a compliance investigation following receipt of a complaint from a health group's patient on April 22, 2019. The patient alleged he had been denied access to his health records. OCR contacted the practice and provided technical assistance on the HIPAA Right of Access on May 2, 2019. OCR advised the practice to review the facts of the request and provide access to the requested records if the request met the requirements of the HIPAA Privacy Rule.

The patient subsequently submitted a request for access in writing which was received by the practice on June 5, 2019. The patient filed a second complaint with OCR on October 9, 2019, as the practice continued to deny him access to his requested records.

> Seventh Case – Fine \$70,000

The settlement and corrective action plan is a result of a complaint filed with the OCR in June 2019. It claimed that the facility failed to take timely action in response to a patient's records access request directing that an electronic copy of protected health information in an electronic health record be sent to a third party. The OCR provided technical assistance on the alleged failure to provide the patient with access to the records and requested that the provider respond to the patient's request. In August 2019, the OCR received a second complaint from the same patient alleging that the provider still had not responded to the patient's records access request. The OCR investigated the matter and the provider provided access to the requested records.

Lesson 1. Due diligence on OCR Technical

> Eighth Case – \$65,000 (OCR issued announcement on 3/24/2021)

In July 2019, a complaint was filed with OCR alleging that the provider failed to take timely action in response to a patient's records access request made in May 2019. OCR provided the provider with technical assistance on the HIPAA Right of Access requirements. Later, in July 2019, OCR received a second complaint alleging that the provider still had not responded to the same patient's records access request. OCR initiated an investigation and determined that the provider's failure to provide timely access to the requested medical records was a potential violation of the HIPAA right of access standard, which requires a covered entity to take action on an access request within 30 days of receipt (or within 60 days if an extension is applicable). As a result of OCR's investigation, the provider provided the patient with a copy of their requested records in November 2019, more than 5 months after the patient's request.

Lesson 1. Due diligence on OCR Technical Assistance-Hot Off the Press!!!!

- Ninth Case – \$30,000 (OCR issued announcement on 11/30/2021)
- On June 24, 2019, HHS received a complaint against the provider from a patient (“Complainant”). The Complainant alleged that she requested her medical records from the provider in December 2018. The Complainant also stated that she had filed a previous complaint with HHS on March 11, 2018, (HHS Transaction Number 19-335955) which was closed by providing technical assistance to DRC. HHS received evidence of Complainant’s request for access from the provider, dated January 2, 2019.
- HHS notified the provider of its investigation in a letter, dated July 18, 2019. In its response, the provider admitted it was aware of the Complainant’s request and it was late in responding to her, but the provider never confirmed the date of Complainant’s request. The provider provided evidence that it sent via FedEx the medical records on July 26, 2019, to the Complainant. In addition, after reviewing the provider’s policies and procedures, HHS concluded that it did not have compliant Access policies and procedures under the Privacy Rule.
- HHS’ investigation indicated that the provider failed to provide timely access to protected health information about the individual in a designated record set. See 45 C.F.R. § 164.524. Also HHS’ investigation indicated that the provider failed to have sufficient written policies and procedures related to providing timely access to protected health information about the individual. See 45 C.F.R. § 164.530(i).

Lesson 1. Due diligence on OCR Technical Assistance-Hot Off the Press (11/30/21)!!!!

> Tenth Case – \$100,000 (OCR issued announcement on 11/30/2021)

The patient requested their records several times (2013-2014). On Dec 15, 2017, OCR issued a Technical Assistance. On March 20, 2018, OCR received a second complaint from the patient. The complainant provided OCR copies of three written requests for the records submitted by their current provider dated May 28, 2017, June 28, 2017, and January 15, 2018. OCR notified the provider on August 15, 2018, that they were initiating an investigation. On Sept 4, 2018, OCR spoke directly with the provider who asked for an extension of the investigation, which was granted, and the investigation was extended until Sept 13 to allow the provider time to respond, but the provider did not respond by the extension date that was granted. On Sept 27, 2018, OCR contacted the provider again, and spoke to the office manager of the provider's office who did not know the status of the provider's response. On December 7, 2018, OCR faxed a letter and sent a letter via mail reminding the provider of their responsibilities of responding. Due to the providers repeated failure to respond on April 5, 2019, OCR sent another letter via fax, and certified mail with return receipt, with all original documentation from the August 15, 2018, data request. On September 13, 2019, OCR sent a letter to the provider that they have concluded their investigation. The letter contained the proposed Resolution Agreement and Corrective Action Plan and gave to provider 10 days to return the signed documentation. On November 4, 2019 OCR issued a Letter of Opportunity to the provider. OCR then obtained the authorization of the Attorney General of the United States prior to issue this Notice of Proposed Determination to impose a CMP.

Lesson 2

Provide the correct
information to the
patient representative



Lesson 2. Provide the correct information to the patient representative

> Eleventh Case— Fine \$70,000

In April 2019, a complaint was received that claimed the provider failed to respond timely to a request from a personal representative seeking access to her father's medical records in February 2019.

The investigation found that the records were not provided to the representative until October 28, 2019— eight months later. To settle the potential violation, the provider had to pay the monetary penalty and entered into a corrective action plan with OCR.

Lesson 2. Provide the correct information to the patient representative -Hot Off the Press!!!!

> Twelfth Case-Fine \$5000

In early August 2019, a complaint was filed with OCR alleging that a provider failed to take timely action in response to a parent's records access request made in July 2019, for a copy of her minor child's protected health information. OCR initiated an investigation and determined that provider's failure to provide timely access to the requested medical records was a potential violation of the HIPAA right of access standard. As a result of OCR's investigation, the provider provided the requested records in May 2021, nearly two years after the parent's request.

Lesson 3

Ensure staff understands
and has access to all the
Designated Records Set



Poll Question:

Do you have the location of all
elements of the Designated
Records Set (DRS)?

YES or NO?

Lesson 3. Ensure staff understands and has access to all the Designated Records Set

> Thirteenth Case – Fine \$85,000

A mother made a complaint to OCR after she claimed the provider failed to provide her with timely access to the fetal heart monitor records of her unborn child. The complaint was received on August 14, 2018 and the written access request was first made to the provider in October 2017.

OCR launched an investigation and the provider provided the mother with access – nine months after the initial request was made.

> Fourteenth Case – Fine \$100,000

A patient filed a complaint with OCR in July 2019 that alleged she was only provided some of her requested medical information despite multiple requests to obtain diagnostic films, including X-ray, MRI and CT scan images.

OCR launched an investigation into the incident after numerous attempts to contact the provider between December 26, 2019 and March 6, 2020. The investigation found that in failing to provide those records, the provider potentially violated the HIPAA Privacy Rule.

As a direct result of the investigation, the patient finally obtained the requested information in October 2020, more than a year after the initial request.

Lesson 3. Ensure staff understands and has access to all the Designated Records Set

› Fifteenth Case: Fine \$75,000

OCR launched an investigation into the provider in February 2019 after receiving a patient complaint that alleged the provider failed to respond to their request for an electronic copy of their protected health information. The patient had requested their records, including billing information, to be sent to a third party.

However, the provider failed to provide all the requested records to the patient until several months after the requests were made, on December 27, 2019. The subsequent audit confirmed that the provider's failure to provide timely access to the requested records was a potential violation of the HIPAA rule.

Lesson 3. Ensure staff understands and has access to all the Designated Records Set

- **HOT OFF THE PRESSES-September 10, 2021: Sixteenth Case \$80,000**
- The Complainant alleged that provider failed to provide her with timely access to her deceased daughter's protected health information. Complainant is her late minor daughter's personal representative. HHS's investigation found that on January 3, 2020, Complainant submitted a written request to provider for access to her late minor daughter's medical records. At the time of the request, the provider provided Complainant with a portion of the requested records. The remainder needed to be collected from another division within the provider's organization. Complainant received the remaining records on June 20, 2020 and July 16, 2020.

Lesson 4

Form and Format



Lesson 4: Form and Format

› Seventeenth Case – Fine \$85,000

The OCR investigation was sparked by a complaint to the agency made on March 6, 2019. A patient claimed the provider failed to forward their medical records in electronic format to a third party, despite repeated requests. The complaint alleged the provider was not in compliance with the HIPAA Privacy Rule.

According to officials, the provider did not provide the records to the third party timely and also failed to provide the records in the requested format. The investigation also showed the provider charged more than the reasonably cost-based fees allowed by HIPAA.

In response, OCR gave the provider technical assistance on ways to correct the potential violations and closed the complaint on March 18, 2019. However, the provider continued to fail to provide the requested records, resulting in another complaint to OCR, despite the OCR assistance.

The requested records were finally provided in the requested format, without cost, two months later on May 8, 2019 – a direct result of a second OCR intervention.

Lesson 5

Understand the Importance of Timeliness of Access



Lesson 5. Understand the Importance of Timeliness of Access

› Eighteenth Settlement – \$65,000

OCR received a complaint in May 2019 from a health system patient claiming that the hospital failed to send an electronic copy of her medical records to her lawyers. The patient made the request on February 19, 2019.

OCR launched an investigation and determined that the health system failed to timely provide a copy of the patient's medical records, which violated the HIPAA rules deeming that patients have the right to request electronic copies of their records in the EHR be sent directly to a third party. The patient received her records in August 2019.

› Nineteenth Settlement \$200,000

This enforcement action stems from two patient complaints filed against a health system.

The first complaint was filed on August 17, 2018 by the patient's attorney, which alleged the individual requested access to her medical records in December 2017 but didn't receive the information until five months later in May 2018.

On January 3, 2020 OCR received a separate complaint against the health system from a law firm employee on behalf of a client. The patient requested an electronic copy of his medical records from the health system on July 15, 2019 and again in September 2019. According to the report, the requested medical records were not sent to the patient until February 2020 – more than six months after the initial requests.

OCR notified the health system on both February 5, 2019 and March 23, 2020 that it would be investigating the health system's compliance with the HIPAA rules. The audit found the health system failed to provide these patients with timely access to their protected health information.

Lesson 5. Understand the Importance of Timeliness of Access

- **Twentieth Settlement – \$30,000** In September 2019, a complaint was filed with OCR alleging the provider failed to take timely action in response to a patient's records access request made in August 2019. OCR initiated an investigation and determined the provider's failure to provide timely access to the requested medical records was a potential violation of the HIPAA right of access standard, which requires a covered entity to take action on an access request within 30 days of receipt (or within 60 days if an extension is applicable). As a result of OCR's investigation, the provider sent the patient their requested records.

Lesson 5. Understand the Importance of Timeliness of Access – Hot off the Press!!! (OCR announcement 11/30/2021)

- **Twenty-First Settlement – \$32,150:** Complainant alleged that provider failed to provide him with timely access to his protected health information (PHI). HHS's investigation found that on November 25, 2019, Complainant submitted to provider, in person, a written request seeking access to his PHI. The provider acknowledged it received Complainant's request on the same date. The provider did not send Complainant a copy of his PHI until March 19, 2020.

Lesson 5. Understand the Importance of Timeliness of Access – Hot off the Press!!! (OCR announcement 11/30/2021)

- › **Twenty-Second Settlement – \$160,000:** On December 4, 2019, January 28, 2020, and February 20, 2020, OCR received complaints against the provider from a patient (“Complainant”). The complaints alleged that the provider failed to provide the Complainant with a copy of her medical records in response to the Complainant’s October 1, 2019 and November 21, 2019 access requests. The Covered Entity did not send the requested records until May 22, 2020.

Lessons 6

Understand how to Use Denial of Access



Lessons 6. Understand how to use Denial of Access

> Twenty Third Case – Fine \$15,000

In January 2018, a patient requested a copy of her medical records, but her request was denied. In April 2018, the patient issued a complaint with OCR, and OCR began its investigation into the provider. The patient finally received her records in August 2020 after it was found that the provider violated the HIPAA Right of Access provision.

Lessons 7

Ensure your facility forms are clear



Lessons 7. Ensure your facility forms are clear

➤ Twenty Fourth Settlement – Fine \$160,000

A nonprofit organization had a documentation process error. A patient requested records and requested the information from the facility (hospital), but they wanted their clinic records (which the hospital did not have access to), so the patient kept continued receiving correspondence letters.

Lessons 8

Patient Fees



Lessons 8. Patient Fees

› Twenty Fifth Settlement – Fine \$10,000

On December 19, 2020, OCR received a complaint alleging that the provider had not provided the complainant with a copy of her medical records despite making a request in person on June 27, 2019, and paying a fee of \$25 for the records. During the course of the investigation, OCR learned via a phone call on April 15, 2021, with the Receptionist at the provider that the provider charges its patients a flat fee of \$25 for a copy of their medical records. To date, the provider has failed to provide the complainant with a copy of her medical records.

What do all these fines
have in common?

**Almost all penalties
were an issue of
timeliness in responding
to patient requests!**



Take these steps to avoid OCR violations

- All technical assistance should be investigated thoroughly.
- Staff should understand the location and how to obtain copies in your Designated Records Set.
- Understand a patient's personal representative and who has a right to their information.





Questions?

Would you like to learn more about Ciox Release of Information?

Yes, please have a Ciox representative contact me

No thanks



Thank You