

LEGAL NEWS FOR YOUR BUSINESS

July 2023

Healthcare Alert

AVOID OCR INVESTIGATIONS: STOP SNOOPING IN ITS TRACKS

On June 15, 2023, the Department of Health and Human Services' ("HHS") Office for Civil Rights ("OCR") announced that a Washington hospital would pay \$240,000 as part of a settlement for HIPAA violations concerning medical record "snooping." In May 2018, Yakima Valley Memorial Hospital submitted a breach notification to OCR, triggering an investigation. The hospital reported that 23 security guards had used their hospital credentials to log in and access patient medical records without a job-related purpose. In addition to the payment, the hospital agreed to a two-year monitoring plan and multiple updates to its HIPAA Privacy and Security procedures and policies.

Although most HIPAA settlements that make the news tend to concern large-scale data breaches, studies suggest that employee snooping is the largest single cause of exposure of patient health information. Small-scale unauthorized access of patient records constitutes a HIPAA privacy violation, but such violations can be harder to detect and prevent. To discourage snooping and keep your privacy practices in shape, providers should take steps to implement protective measures and communicate with employees:

1. ***Review relevant policies:*** Healthcare providers should ensure that policies regarding accessing PHI are fully up-to-date and accessible for all employees with access to medical records.
2. ***Monitor access logs for abnormalities:*** Although violations may be hard to detect, keeping a close eye on access logs for abnormal patterns may help curb improper access.
3. ***Communicate policies, expectations, and consequences to all employees:*** Without the right training and communication, employees may not even be aware that accessing records without authorization is a HIPAA violation that can lead to huge penalties. Healthcare providers should ensure that existing policies regarding PHI access and consequences for improper access are communicated to each employee through training and reminders.

Taking steps now to protect PHI and prevent unauthorized access can help providers avoid HIPAA violations, OCR investigations, and hefty penalty payments.

If you have questions about your HIPAA policies, please contact any member of Gardner Skelton's healthcare team.

Employment Alert

UPDATES FOR FTC'S PROPOSED NON-COMPETE RULE

In March, we published a **summary** of the Federal Trade Commission's proposed rule to effectively ban non-compete agreements across almost all industries. Earlier this year, the FTC sent shockwaves throughout the labor market after announcing a new proposed rule that would prevent employers across nearly every industry from entering into any non-compete agreement with an employee, with very limited exceptions. If the FTC chooses to issue a final rule, its provisions would not be enforceable until six months later, and any final rule is expected to face significant litigation and opposition.

The comment period for the proposed rule was extended by 30 days and officially closed on April 19, 2023. The FTC reported receiving nearly 27,000 public comments on the proposed rule. Many comments spoke out in support of the proposed rule, including a letter from 12 U.S. senators and 52 U.S. House Representatives. 18 state Attorneys General also submitted a public comment supporting the FTC's effort to benefit low- and middle-wage workers and encourage fair competition and innovation. Other groups, including the U.S. Chamber of Commerce and the American Hospital System, have submitted comments in opposition to the proposed rule, arguing that it will inhibit companies from protecting trade secrets.

A Bloomberg Law article reports that by late February 2023, the FTC had spent nearly 6,000 hours and \$500,000 on the rulemaking. Given the significant labor needed for the rulemaking, the high number of comments received, and anticipated challenges to a final rule, the FTC is not likely to vote on the proposed rule until April 2024. Therefore, any final version of the proposed rule could take effect, at earliest, in October 2024. While 15 months may seem like a long timeline, employers should continue taking action now to take stock of current non-compete agreements and review policies and procedures for entering into such agreements in preparation for publication of a final rule.

If you have questions or concerns about how the FTC's Proposed Rule could affect your employment practices, please contact any member of Gardner Skelton's employment team.



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