HIPAA COMPLIANCE

CALIFORNIA STATE UNIVERSITY, FRESNO

Audit Report 10-54
November 9, 2010

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ABBREVIATIONS

CSU California State University
HHS Department of Health & Human Services
HIPAA Health Insurance Portability and Accountability Act
HITECH Act Health Information Technology for Economic and Clinical Health Act
HR Human Resources
PHI Protected Health Information
Privacy Rule Standards for Privacy of Individually Identifiable Health Information
EXECUTIVE SUMMARY

As a result of a systemwide risk assessment conducted by the Office of the University Auditor during the last quarter of 2009, the Board of Trustees, at its January 2010 meeting, directed that Health Insurance Portability and Accountability Act (HIPAA) compliance be reviewed.

We visited the California State University, Fresno campus from August 9, 2010, through August 18, 2010, and audited the procedures in effect at that time.

Our study and evaluation did not reveal any significant internal control problems or weaknesses that would be considered pervasive in their effects on HIPAA compliance activities. However, we did identify other reportable weaknesses that are described in the executive summary and body of this report. In our opinion, the operational and administrative controls for HIPAA compliance activities in effect as of August 18, 2010, taken as a whole, were sufficient to meet the objectives stated in the “Purpose” section of this report.

As a result of changing conditions and the degree of compliance with procedures, the effectiveness of controls changes over time. Specific limitations that may hinder the effectiveness of an otherwise adequate system of controls include, but are not limited to, resource constraints, faulty judgments, unintentional errors, circumvention by collusion, and management overrides. Establishing controls that would prevent all these limitations would not be cost-effective; moreover, an audit may not always detect these limitations.

The following summary provides management with an overview of conditions requiring attention. Areas of review not mentioned in this section were found to be satisfactory. Numbers in brackets [ ] refer to page numbers in the report.

PROGRAM ADMINISTRATION [6]

The campus did not have a documented procedure to designate HIPAA-covered health-care components, and health-care components were not always correctly designated in reports to the chancellor’s office. In addition, the campus did not document participant authorizations during human resources customer service activities.
INTRODUCTION

BACKGROUND

The Health Insurance Portability and Accountability Act (HIPAA) of 1996 was issued by the U.S. Department of Health & Human Services (HHS). California State University (CSU) campuses and the Office of the Chancellor must comply with HIPAA by adhering to federal statutes regarding security and confidentiality of sensitive medical records maintained by the CSU entity and its business units.

HHS issued the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) to implement the requirements of HIPAA. The Privacy Rule took effect on April 14, 2003, with a one-year extension for certain “small plans,” and established a set of national standards for the protection of certain health information. Those standards address the use and disclosure of individuals’ protected health information (PHI) by covered entities, as well as individuals’ right to understand and control how their health information is used. Given that the health-care marketplace is diverse, the Privacy Rule is designed to be flexible and comprehensive so it can cover the variety of uses and disclosures that need to be addressed, and so it does not block the flow of information health-care providers need to provide high-quality care and protect the public health. The HHS Office for Civil Rights is responsible for implementing and enforcing the Privacy Rule with respect to voluntary compliance activities and civil monetary penalties.

As part of the American Recovery and Reinvestment Act of 2009, Subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH Act) was enacted to address the privacy and security concerns associated with the electronic transmission of health information. The HITECH Act extends the privacy and security provisions of HIPAA, including newly updated civil and criminal penalties, to business associates of covered entities, and it identifies the allocation of responsibility for the shared business associate and covered entity liability with regard to breach of the HITECH Act. Subtitle D of the HITECH Act also establishes new notification requirements for covered entities, business associates, vendors of personal health records, and related entities in the event a breach of PHI occurs. These changes are required in all business associate agreements with covered entities. The regulations associated with the new enhancements to HIPAA enforcement took effect on November 30, 2009.

Historically, CSU compliance with privacy regulations became effective April 14, 2003, according to Title II regulations. The CSU responded to HIPAA legislation by developing its own policies to ensure adequate compliance. These included the CSU HIPAA Privacy Summary Manual, Executive Order 877, and Human Resources (HR) Coded Memorandum HR 2003-14 (later superseded by HR 2004-22), all of which were issued in 2003.

HIPAA Title II requirements cover the privacy and security of individual health information used, transmitted, and retained by employer health plans and other covered entities, and the electronic transmission of PHI. The HIPAA rules that the CSU must abide by include:

- Privacy rules that safeguard the privacy of individual health information by placing limits on the accessibility and dissemination of patient information.
Electronic data interchange rules that standardize transactions/code sets for electronic data interchange in order to encourage electronic commerce in health care.

Security rules that maintain confidentiality and data integrity, prevent unauthorized use of data, and guard against physical hazards.

The privacy regulations affect almost every employer that sponsors a health plan. If an entity creates, maintains, or receives PHI other than enrollment, disenrollment, premium payment information, or summary health information, it must comply with HIPAA regulations. Health-care providers who transmit health information in electronic form in connection with specific types of transactions are also subject to HIPAA. The CSU self-identifies its covered components, which include many campus benefits offices and student health centers. In addition, CSU-sponsored health benefit plans, including the health-care reimbursement account plan and the campus-sponsored external employee assistance programs, are subject to HIPAA privacy regulations.
PURPOSE

Our overall audit objective was to ascertain the effectiveness of existing policies and procedures related to HIPAA compliance and to determine the adequacy of internal controls that ensure compliance with relevant governmental regulations, Trustee policy, Office of the Chancellor directives, and campus procedures.

Within the audit objective, specific goals included determining whether:

- Administration of HIPAA compliance incorporates a defined mission, stated goals and objectives, and clear lines of organizational authority and responsibility.
- Policies and procedures are current and comprehensive, and distribution procedures are effective.
- Health-care components have been properly designated.
- A privacy official and privacy contacts have been appointed to deal with HIPAA policies and compliance.
- Business associates safeguard PHI and have signed appropriate contracts and confidentiality agreements.
- Document-retention procedures are in place to ensure that sensitive HIPAA information is maintained in accordance with regulations.
- Notices of privacy practices for PHI have been appropriately distributed, and privacy notification procedures are in place.
- Disclosure of PHI is controlled by proper consent and authorization documents and verbiage.
- Procedures allow individuals to receive communication of PHI through alternate means or at alternate locations, different from typical methods of transmission.
- Procedures are in place to protect against inappropriate disclosures of PHI, and reporting procedures exist should a breach occur.
- Health-care components have performed risk assessments sufficient to identify risks and vulnerabilities to electronic PHI.
- Sufficient HIPAA-related training has been provided to both new and established employees.
SCOPE AND METHODOLOGY

The proposed scope of the audit as presented in Attachment B, Audit Agenda Item 2 of the January 26 and 27, 2010, meeting of the Committee on Audit stated that HIPAA compliance includes review of compliance with federal statutes regarding security and confidentiality of sensitive medical records maintained by the campus. Proposed audit scope would include review of Trustee policy, federal directives, systemwide directives, and campus policies and procedures; procedures for handling confidential information; communications; training; and necessary retention of key records.

Our study and evaluation were conducted in accordance with the *International Standards for the Professional Practice of Internal Auditing* issued by the Institute of Internal Auditors, and included the audit tests we considered necessary in determining that accounting and administrative controls are in place and operative. This review emphasized, but was not limited to, compliance with state and federal laws, Board of Trustee policies, and Office of the Chancellor policies, letters, and directives. The audit focused on procedures in effect from January 1, 2008, through July 31, 2010.

A preliminary risk assessment of campus HIPAA compliance information was used to select for our audit testing those areas or activities with highest risk. This assessment was based upon a systematic process using management’s feedback and professional judgments on probable adverse conditions and other pertinent information, including prior audit history in this area. We sought to assign higher review priorities to activities with higher risks. As a result, not all risks identified were included within the scope of our review.

Based upon this assessment of risks, we specifically included within the scope of our review the following:

- Evaluation of campus HIPAA organization and health-care components.
- Business associate contracts and agreements and the related confidentiality of PHI handling.
- HIPAA privacy notice procedures.
- Safeguards in place to control PHI.
- Authorization documents necessary to use and/or disclose PHI.
- Reporting procedures in place in the event of a breach of PHI.
- Campus risk assessment procedures for health-care components.
- Recordkeeping and document retention procedures sufficient to comply with regulations.
- HIPAA-related training and continuing education for both new and established employees.
OBSERVATIONS, RECOMMENDATIONS, AND CAMPUS RESPONSES

PROGRAM ADMINISTRATION

DESIGNATION OF HEALTH-CARE COMPONENTS

The campus did not have a documented procedure to designate HIPAA-covered health-care components, and health-care components were not always correctly designated in reports to the chancellor’s office.

We noted that the Student Health Center was not reported to the chancellor’s office as a HIPAA-covered component even though it initiated electronic transmissions of protected health information (PHI) in March 2009. In addition, we noted that the Speech, Language and Hearing Clinic was erroneously reported to the chancellor’s office as a HIPAA-covered component in 2008.

Executive Order 877, Designation of Health Care Components for Purposes of the Health Care Portability and Accountability Act of 1996 (HIPAA), dated April 14, 2003, states that the president of each California State University (CSU) campus shall be responsible for ensuring that the formal designation of CSU health-care components is at all times accurate with respect to covered health-care providers on his/her respective campus. Additional health-care components shall be reported promptly to the assistant vice chancellor, student academic support.

The Health Insurance Portability and Accountability Act (HIPAA) of 1996, Health Care Components, §164.105(a), states that a covered entity that is a hybrid entity has the responsibility to designate health-care components and document the designation.

The director of human resources (HR) stated that due to retirements in June 2010 and August 2010, the campus did not have a campuswide HIPAA privacy contact, but one would be appointed in the near future.

Failure to properly designate HIPAA-covered health-care components increases the risk of misunderstandings and non-compliance with federal legislation.

Recommendation 1

We recommend that the campus:

a. Develop procedures for designating HIPAA-covered health-care components to ensure that designations are reported to the chancellor’s office and that designation reporting is accurate.

b. Submit to the chancellor’s office an updated report that designates HIPAA-covered health-care components.
Campus Response

We concur with the recommendation. The university will develop procedures to ensure accurate and timely reporting of HIPAA-covered health-care components to the chancellor’s office. This item, along with an updated report, will be submitted by January 7, 2011.

PARTICIPANT AUTHORIZATIONS

The campus did not document participant authorizations during HR customer service activities.

We noted that although benefits customer service activities were conducted in a confidential manner and benefits officers received verbal authorizations, authorizations were not documented when employees were assisted in person.

The CSU HIPAA Privacy Summary Manual, §5.03a, Customer Service, states that certain CSU staff should assist participants with various eligibility and claims questions. Questions related solely to enrollment and disenrollment will be processed in accordance with Section 5.02. The process involves: intake of questions from participants; collecting information relevant to the questions; documenting the decisions; communicating with the participants to apprise them of the status and resolution; and communicating with business associates and insurers as appropriate. If the CSU staff is going to be sharing and receiving protected health information with the health insurance carriers, health maintenance organizations, external employee assistance programs vendors and/or health-care reimbursement account claims administrator, the CSU staff must get a Participant’s Authorization form first.

The CSU HIPAA Privacy Summary Manual, §5.04, When Authorizations Are Needed, states that the circumstances in which CSU will obtain a Participant’s Authorization include (but are not limited to) customer service activities (see Section 5.03 above) such as helping a participant in getting a claim paid or in obtaining preauthorization for a medical procedure.

The HR director stated that the current practice of obtaining verbal authorization from employees seeking assistance in person (when the employee and benefits manager were on a conference call with the insurance carrier) was discussed in the question-and-answer portion of the 2004 HIPAA training provided by the chancellor’s office. She further stated that if the employee was not present or if follow-up was required, the employee would be required to fill out a written authorization form.

Failure to document participant authorizations increases the risk of misunderstandings and potential legal liabilities.

Recommendation 2

We recommend that the campus document participant authorizations when performing HR customer service activities.
**Campus Response**

We concur with the recommendation. HR will implement procedures to document authorizations when performing HR customer service activities by January 7, 2011.
## APPENDIX A:
### PERSONNEL CONTACTED

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
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<tbody>
<tr>
<td>John D. Welty</td>
<td>President</td>
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<tr>
<td>Amanda Adams</td>
<td>Director, Central California Autism Center</td>
</tr>
<tr>
<td>Juanita Aguilar</td>
<td>Benefits Manager, Human Resources (HR)</td>
</tr>
<tr>
<td>Richard Boes</td>
<td>Director, Information Technology Services and Chief Information Security Officer</td>
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<tr>
<td>John Briar</td>
<td>Director, Campus Information Systems</td>
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<tr>
<td>Kelli Eberlein</td>
<td>Head Athletic Trainer, Department of Athletics</td>
</tr>
<tr>
<td>Don Freed</td>
<td>Chair, Communicative Disorders and Deaf Studies Department</td>
</tr>
<tr>
<td>Esther Gonzalez</td>
<td>Confidential Analyst, Office of the Vice President for Administration</td>
</tr>
<tr>
<td>Constance Jones</td>
<td>Chair, Institutional Review Board</td>
</tr>
<tr>
<td>Gary Lentell</td>
<td>Professor, Physical Therapy Department</td>
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<tr>
<td>John Lloyd</td>
<td>Director, Rehabilitation Counseling Evaluation Center</td>
</tr>
<tr>
<td>Christopher Lucey</td>
<td>Director, Fresno Family Counseling Center</td>
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<tr>
<td>Jan Parten</td>
<td>Director, HR</td>
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<tr>
<td>Nancy Petenbrink</td>
<td>Director, Employee Assistance and Wellness</td>
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<tr>
<td>Michael Russler</td>
<td>Chair, Nursing Department</td>
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<tr>
<td>Dirk Ruthrauff</td>
<td>Interim Director, Health and Psychological Services</td>
</tr>
<tr>
<td>Cynthia Teniente-Matson</td>
<td>Vice President for Administration and Chief Financial Officer</td>
</tr>
<tr>
<td>Peggy Trueblood</td>
<td>Chair, Physical Therapy Department</td>
</tr>
<tr>
<td>Rafael Villegas</td>
<td>Information Technology Security Officer</td>
</tr>
</tbody>
</table>
December 8, 2010

Memorandum

To: Larry Mandel
   University Auditor
   Office of the Chancellor

From: Cynthia Teniente-Matson
   Vice-President for Administration and
   Chief Financial Officer

Subject: Responses to HIPAA Compliance Audit Report #10-54

The University has reviewed the incomplete draft of the HIPAA Compliance Audit Report #10-54. Attached are campus responses to the recommendations. Please let me know if you have any questions. Thank you.

Attachment

c: Dr. John D. Welty
   Mr. Richard Boes
   Ms. Janice Parten
   Mr. Dirk Ruthrauff
HIPAA COMPLIANCE

CALIFORNIA STATE UNIVERSITY,
FRESNO

Audit Report 10-54

PROGRAM ADMINISTRATION

DESIGNATION OF HEALTH-CARE COMPONENTS

Recommendation 1

We recommend that the campus:

a. Develop procedures for designating HIPAA-covered health-care components to ensure that designations are reported to the chancellor’s office and that designation reporting is accurate.

b. Submit to the chancellor’s office an updated report that designates HIPAA-covered health-care components.

Campus Response

We concur with the recommendation. The University will develop procedures to ensure accurate and timely reporting of HIPAA-covered health-care components to the chancellor’s office. This item along with an updated report will be submitted by January 7, 2011.

PARTICIPANT AUTHORIZATIONS

Recommendation 2

We recommend that the campus document participant authorizations when performing HR customer service activities.

Campus Response

We concur with the recommendation. Human Resources will implement procedures to document authorizations when performing HR customer service activities by January 7, 2011.
January 4, 2011

MEMORANDUM

TO: Mr. Larry Mandel
    University Auditor

FROM: Charles B. Reed
      Chancellor

SUBJECT: Draft Final Report 10-54 on HIPAA Compliance,
         California State University, Fresno

In response to your memorandum of January 4, 2011, I accept the response as submitted with the draft final report on HIPAA Compliance, California State University, Fresno.

CBR/amd