

*Each month, we focus on a HIPAA question and provide an in-depth answer. The purpose of the newsletter is to keep these topics at the front of everyone's minds, to ensure a trained, knowledgeable sales force.*

### **HIPAA Myths Continued**



**QUESTION:**

**Does the Privacy Rule mandate all sorts of new disclosures of patient information?**

**ANSWER:**

**HHS states that disclosure is mandated in only two situations: (i) to the individual patient upon request, or (ii) to the Secretary of the Department of Health and Human Services for use in oversight investigations.** Disclosure is permitted, but not mandated, for other uses under certain limits and standards, such as to carry out treatment, payment, or health care operations, or under applicable laws. Disclosure of PHI has always been permitted for national security, public health monitoring, and law enforcement, as well as many others. The Privacy Rule requires that patients be informed (through the provider's notice of privacy practices) of these uses and disclosures. Nearly all uses and disclosures are permissive rather than mandatory, so health care plans and providers may choose not to use or disclose medical information. §§ 164.502, 164.508, 164.512, 164.520, [http:// www. hhs. gov/ocr/privacysummary.pdf](http://www.hhs.gov/ocr/privacysummary.pdf) (pages 4-11).

**QUESTION:**

**Does the Privacy Rule impose so many requirements on covered entities that the costs of compliance are prohibitive?**

**ANSWER:**

**The White House issued a report in 2002 estimating the costs of implementing HIPAA over ten years at approximately \$18 billion and estimating the savings incurred from putting the transaction standards in place over ten years at approximately \$30 billion, thus saving the health care industry approximately \$12 billion overall.** The reports also states there will be additional savings in the long term because patients will have more faith in the health care system, so they will be less likely to withhold vital information from their doctors, and will more readily seek care.

**QUESTION:**

**Can patients sue health care providers for not complying with the Privacy Rule?**

**ANSWER:**

**The HIPAA Privacy Regulation does not give people the right to sue.** Even if a person is the victim of a violation of the Privacy Rule, the law does not allow people to sue. Instead, the person must file a written complaint with the Secretary of Health and Human Services via the Office for Civil Rights. It is then within the Secretary's discretion to investigate the complaint. HHS may impose civil penalties ranging from \$100 to \$25,000; criminal sanctions ranging from \$50,000 to \$250,000, with corresponding prison terms, may be enforced by the Department of Justice. However, HHS says it "intends to seek and promote voluntary compliance" and "will seek to resolve matters by informal means whenever possible." Therefore enforcement "will be primarily complaint-driven," and civil penalties will only be imposed if the violation was willful. Such penalties will not be imposed if the failure to comply was due to reasonable cause if it is corrected within 30 days. The standard is even higher for imposing criminal penalties. §§ 160.306, 160.312 (a)(1), 160.304(b), 42 U.S.C § 1320 et seq., <http://www.hhs.gov/news/facts/privacy.html>.