

Resources

Federal Officials Predict More Prosecutions of Medical Record Privacy Cases

November 16, 2011

On November 9, 2011, federal officials appearing before the Senate Judiciary Subcommittee on Privacy, Technology and the Law said that provisions in the Health Information Technology for Economic and Clinical Health Act (HITECH Act) could result in more prosecutions for medical records privacy breaches.

Officials from the Department of Justice and the Department of Health and Human Services (HHS) said they are using available legal powers to investigate medical record privacy breaches and expect the number of prosecutions to increase under the legal authority provided under the HITECH Act.

"All signs indicate that we are still not there" in thoroughly ensuring patient privacy, said subcommittee Chairman Al Franken (D-Minn.). Franken added that the move to make health care information available electronically "has created very real and very serious privacy concerns." Franken said that HHS has received more than 64,000 complaints on medical privacy since 2003—22,500 of which fell under the department's authority—but it has imposed only one civil monetary penalty and reached six other monetary settlements during this time. Franken said the numbers most likely are indicative of an HHS policy to work with violators to get them into compliance with federal law rather than prosecute. But even so, he added, "these figures seem quite low." Leon Rodriguez, director of the Office for Civil Rights at HHS, agreed that the department's focus has been to help those that are out of compliance alter their programs. **But, he said, that likely will change** because the HITECH Act puts new emphasis on enforcement regardless of whether an entity has taken corrective action, and the act contains much stronger penalties for privacy breach violations. "So we have witnessed a change in that environment," he said, referring to the possibility that the HITECH Act will lead to more investigations and prosecutions.

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