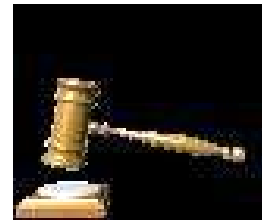


Court Rulings Allow HIPAA Compliance As Standard Of Care For Individual Lawsuits

Latest Trends In Series Of Rulings

The Health Insurance Portability and Accountability Act (the HIPAA Privacy rule) has been used in several recent court cases to justify private lawsuits ranging from negligence and negligence per se to the severe infliction of emotional distress.



A federal district court recently addressed the issue ([K.V. & S.V v. Women's Healthcare Network, LLC](#), (June 6, 2007)) of whether a plaintiff can bring a private lawsuit involving HIPAA in a state court. The federal court allowed the case to proceed on the state level even though it involved HIPAA.

In the Women's Healthcare Network case, the plaintiffs "*filed a multi-count Petition for Damages in the Circuit Court of Jackson County, Missouri related to the alleged disclosure of certain private or confidential information by Defendants*"

The Women's Healthcare Network unsuccessfully attempted to prevent the plaintiffs from bringing a negligence lawsuit in a state court in Missouri in an effort to ensure that the case was adjudicated on the federal level because numerous federal courts have prevented private lawsuits based on HIPAA.

This decision by the federal court parallels other recent cases (*Acosta v. Byrum* and *Sorensen v. Barbuto*) which also allowed private lawsuits for negligence in both the States of North Carolina and Utah.

The importance of this series of rulings to any organization that uses Protected Health Information (PHI) which is regulated by HIPAA is that both state and federal courts are allowing individual causes of action in situations that involve claimed HIPAA violations.

Another recent case involving an individual lawsuit also bears watching. In [Puno v. Mount Dessert Island Hospital](#), (June 28 2007)), a woman who had filed a report on HIPAA violations by her fellow employee(s) at Mount Dessert Island Hospital claimed she was subjected to abuse and ultimately discharged from her job.

She filed a lawsuit against the hospital for employment discrimination based upon race and gender, a retaliatory discharge claim based upon a complaint she made against another co-worker for violating HIPAA, and also brought a whistleblower's claim under state law.

In this case, a United States Magistrate made significant recommendations in denying the defendant's motion for summary judgment, (which is a technical method of preventing the case from going to trial), to the United States District Court.

This case is still in the judicial process and has not been finally adjudicated

but, it reveals the potential vulnerability of organizations that have not properly trained their personnel on HIPAA compliance and have not taken proper steps to address privacy. Although the defendant has appealed the recommendations, this case shows how plaintiff's attorneys may use HIPAA in a private lawsuit involving state and federal level legal claims.

This ruling further reinforces the potential for the use of HIPAA compliance as a standard for allowing individual lawsuits, which previous rulings in two recent cases, *Sorensen v. Barbuto*, 143 P.3d 295 (Utah Ct. App. 2006) and *Acosta v. Byrum*, 638 S.E.2d 246 (N.C. Ct. App. 2006) had also allowed.

HIPAA Privacy Regulations Impact Schools & Local Government Entities



Compliance with the Federal Health Information Portability & Accountability Act (HIPAA) is required of many public entities, including school districts and other local government entities such as counties or cities, if "Protected Health Information" (PHI) is involved in operations. The HIPAA regulations specifically mention schools and universities in section 45 CFR §160.103 of the HIPAA Privacy Rule along with "health care providers" and "insurers" as organizations that "create and receive protected health information."

In addition, the Texas Health and Safety Code clearly addresses the relation of HIPAA to government and schools:

"Section § 181.001 DEFINITIONS. (a) Unless otherwise defined in this chapter, each term that is used in this chapter has the meaning assigned by the Health Insurance Portability and Accountability Act and Privacy Standards. (b) In this chapter: (1) "Commissioner" means the commissioner of health and human services. (2) "Covered entity" means any person who: (A) for commercial, financial, or professional gain, monetary fees, or dues, or on a cooperative, nonprofit, or pro bono basis, engages, in whole or in part, and with real or constructive knowledge, in the practice of assembling, collecting, analyzing, using, evaluating, storing, or transmitting protected health information. The term includes a business associate, health care payer, governmental unit, information or computer management entity, school, health researcher, health care facility, clinic, health care provider, or person who maintains an Internet site; (B) comes into possession of protected health information; (C) obtains or stores protected health information under this chapter; or (D) is an employee, agent, or contractor of a person described by Paragraph (A), (B), or (C) insofar as the employee, agent, or contractor creates, receives, obtains, maintains, uses, or transmits protected health information. (3) "Health Insurance Portability and Accountability Act and Privacy Standards" means the privacy requirements in existence on August 14, 2002, of the Administrative Simplification subtitle of the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) contained in 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subparts A and E."

A school district may handle PHI in several areas of operations including nursing, special education, counseling, athletics, safety or human resources and the PHI related to school districts can involve both students and employees. It is important to understand that the HIPAA regulations impact far more areas than group health plans in many organizations

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HIPAA Solutions, LC Announces

"Bid Compliant" Contract Status Awarded By TCPN - HIPAA Solutions is pleased to announce that it is now a "Bid Compliant" contractor with [The Cooperative Purchasing Network \(TXPN\)](#). School districts are now able to acquire HIPAA Solutions, LC products and services through TCPN. This significantly improves the ability of school districts to implement the HIPAA ComplyPAK as a resource to address compliance issues related to the Federal Privacy and Security regulations in HIPAA that impact schools & universities, healthcare providers, government entities and businesses.



HIPAA ComplyPAK© for ISD's

HIPAA Solutions, LC provides comprehensive, easy-to-implement and cost-effective resources for compliance targeted to specific requirements of the Health Insurance Portability and Accountability Act (HIPAA). The resources are contained in a suite of tools and software called the HIPAA ComplyPAK©.

ComplyPAK is based on a multi-faceted, reliable and comprehensive approach that allows organizations to "self-implement" solutions targeted to specific requirements of HIPAA while reducing costs and complexity of compliance. Basically, ComplyPAK "automates compliance". The PHI Locator© (PHIL) is a software component of ComplyPAK that allows an organization to efficiently locate and track the uses of Protected Health Information (PHI). Contact HIPAA Solutions, LC for a briefing or free webinar on ComplyPAK.

[Contact HIPAA Solutions](#)

HIPAA ComplyPAK
Training
Free Webinar Briefing
Compliance Resources

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