Employee Sanctions
HIPAA

Building Leaders – Transforming Hospitals – Improving Care

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Objectives

Participants will be able to:

1. Identify three regulatory requirements related to the implementation of consistent enforcement of disciplinary policies for workforce members who fail to comply with privacy standards.

2. Describe three consequences of not implementing and applying sanctions consistently.

3. Explain one method/tool that can be used for applying consistent sanctions for workforce privacy violations.
Rules and Regulations

• OIG Compliance Program Guidance
• Federal Sentencing Guidelines
• Privacy Rule
• Affordable Care Act
OIG Compliance Guidance

A program should include:

– Standards of Conduct
– Written Policies setting forth degrees of disciplinary actions
  • Oral Warnings
  • Suspension
  • Privilege Revocation**
  • Termination
  • Financial Penalties, if appropriate
– Consistent Application
– Significant sanctions for intentional or reckless noncompliance
– Include disciplinary action where a responsible employee’s failure to detect a violation is attributable to his or her negligence or reckless conduct

** Appropriate peer review procedures should be followed
Federal Sentencing Guidelines

• Promoted and enforced consistently
• Incentives to perform according to standards
• Appropriate disciplinary measures
§164.530 - Administrative Requirements §164.530(e)(1) A covered entity must have and apply appropriate sanctions against members of its workforce who fail to comply with the privacy policies and procedures of the covered entity or the requirements of this subpart.
Affordable Care Act

• Section 6102 (b)(4)(F) The standards must have been consistently enforced through appropriate disciplinary mechanisms, including as appropriate, discipline of individuals responsible for the failure to detect an offense.
Workforce Members

- Employees
- Volunteers
- Trainees
- Contract Staff
- Medical Staff
- Individuals whose conduct in the performance of work is under the direct control of the entity
Sanctions

- Should be relevant to the incident
- Should be relevant to the potential harm
- Should be standardized
Policies

• Define key terms
• Define leadership roles
• Identify violation categories and the disciplinary measure for each
• Mitigating factors that will be taken into consideration
• Support the HR disciplinary policy.
Communicate

Make sure employees

- are told the nature of the problem
- know what they need to do to fix the problem
- are given a reasonable time to fix the problem
- understands the consequences of either their refusal or failure to fix the problem
Consistency !!

- Past disciplinary records
- Frequency of violations
- Same or similar infraction
- Past job performance
- Similar job duties
- Length of employment
Industry Consequences of Inconsistent Application

- Sends a confusing message
- Inconsistent corrective disciplinary action
- Poor compliance
- Delayed response in application
- Erosion of public trust
- Weakened position for dispute resolutions
- Vulnerability to civil actions and lawsuits
- Vulnerability to penalties and fines
- Increased regulation
- Research integrity
Breach Risk Assessment

- The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification
- The unauthorized person who used the PHI or to whom the disclosure was made
- Whether the PHI was actually acquired or viewed
- The extent to which the risk to the PHI has been mitigated.
• Tool modified based on NCHICA tool
• Modification uses a point system
• Points can be correlated to disciplinary action to emphasis objectivity.
Discipline- Level 1

1  2  3  4  5  6  Low

- Coaching Moment
- Verbal Warning
Discipline - Level 2

- Education
- Written Warning
Discipline- Level 3

- Education
- Written Warning \textit{and}
- Suspension without pay
Discipline- Level 4

- Termination
Disciplinary Grid

Low
7 8 9 10 11

Level 2
Written Warning
Education

RISK
12 13 14 15 16

Level 3
Education
Written Warning
Suspension
12 = 1 day
13 = 2 day
14 = 3 days
15 = 4 days
16 = 5 days

High
17 18 19 20

Level 4
Termination
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References


State University of New York. (2012). Breach Notification Risk Assessment Tool