

## A NEW ERA IN HIPAA ENFORCEMENT: CONNECTICUT ATTORNEY GENERAL FILES FIRST HITECH ACT SUIT

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Connecticut Attorney General Richard Blumenthal has filed a lawsuit against Health Net of Connecticut, Inc. for violations of the Health Insurance Portability and Accountability Act ("HIPAA") following Health Net's loss of protected health information ("PHI") and other personally identifiable information. The lawsuit, which Blumenthal describes as "[s]adly ... historic," is the first action by a state attorney general involving HIPAA violations since the Health Information Technology for Economic and Clinical Health Act ("HITECH"), part of the federal stimulus law signed by President Obama last February, authorized state attorneys general to enforce HIPAA.

The lawsuit stems from the disappearance earlier this year of a portable computer disk drive from Health Net's offices, which contained PHI, social security numbers, and bank account numbers for 1.5 million current and former members, including 446,000 in Connecticut. The missing information included 27.7 million scanned pages of over 120 different types of documents, including insurance claim forms, membership forms, appeals and grievances, correspondence, and medical records. According to a report by a computer forensic consulting firm hired by Health Net, the data was neither encrypted nor otherwise protected from access and viewing by unauthorized persons, but rather was viewable through the use of commonly available software.

Blumenthal's lawsuit alleges that Health Net failed to ensure the confidentiality and integrity of PHI, supervise and train its workforce on policies and procedures concerning the appropriate maintenance, use, and disclosure of PHI, and promptly notify Connecticut authorities and residents of the breach. According to the complaint, Health Net discovered the breach in May 2009 but did not notify affected consumers until nearly six months later. Blumenthal is also seeking a court order blocking Health Net from continued violations of HIPAA by requiring that it encrypt any PHI contained on a portable electronic device.

According to a statement issued January 13, Health Net is in the process of reviewing the lawsuit and will "work cooperatively" with Blumenthal on the matter. Health Net represents that it has found no evidence of misuse of the missing information, but is nonetheless offering two years of free credit monitoring services to all affected members and additional assistance to members who experience actual identity theft.

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