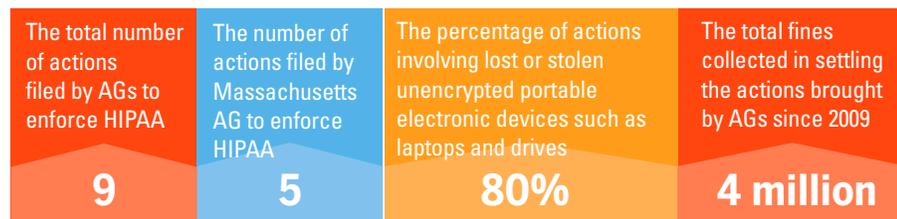


## Healthcare

# Healthcare Data Breach State-Level Enforcements and Fines At A Glance

Pursuant to the Health Information Technology for Economic and Clinical Health Act (“HITECH”), state attorney generals (“AGs”) have the power to bring civil actions to enforce HIPAA on behalf of their state citizens. To date, few AGs have brought such actions. AGs that have initiated suits have alleged a variety of state law claims in addition to HIPAA. Most, but not all, AG actions have been brought against “covered entities” (medical providers, hospitals etc.) under HIPAA.

It does not appear that enforcing HIPAA is a priority for most AGs, due to the low number of actions brought under the statute. Connecticut, Vermont, Minnesota, and Indiana have each brought one action. Massachusetts is the only state that has brought more than one action.<sup>1</sup>



**\$12,000 - \$2.5 million**  
Range of fines imposed by AGs

### Risk factors for a HIPAA action brought by an AG:

- ✓ Unencrypted portable electronic devices
- ✓ Notification and report of the breach that takes longer than three months
- ✓ Misrepresentation to the patients concerning the risk of harm, e.g. claim that the lost files are not easily accessible, when in fact there is publicly available software that allows access
- ✓ Other HIPAA violations that are uncovered during an investigation, e.g., violation of the “minimum necessary” standard
- ✓ Lack of a system in place to track the inventory of portable electronic devices containing patient information, so that a loss cannot be discovered and reported in a timely manner
- ✓ A large number of Massachusetts patients are affected

<sup>1</sup> All data analyzed are as of March 2015.

Bryan Cave’s Healthcare Team and Global Data Privacy and Security Team can help you devise a data security program that is compliant with HIPAA, and implement measures to mitigate the risk and damages resulting from a breach.

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