

Daily Privacy & Consumer Regulatory Alert

Published by the Privacy and Consumer Regulatory Practice | Washington, DC Office

May 24, 2019

FEDERAL DEVELOPMENTS

FCRA Model Forms and Disclosures

On May 23rd, the Federal Trade Commission published a *Federal Register* [notice](#) rescinding several model forms and disclosures under the Fair Credit Reporting Act (FCRA) that the FTC determined were unnecessary. According to the notice, employers should refer to the Consumer Financial Protection Bureau for further FCRA-related guidance. The Model Forms and Disclosures that the FTC rescinded include:

- Appendix A — Model Prescreen Opt-Out Notices;
- Appendix D — Standardized Form for Requesting Annual File Disclosures;
- Appendix E — Summary of Identity Theft Rights;
- Appendix F — General Summary of Consumer Rights;
- Appendix G — Notice of Furnisher Responsibilities; and
- Appendix H — Notice of User Responsibilities.

HIPAA Data Breach Settlement

On May 23rd, the Department of Health and Human Services (HHS) [announced](#) that Indiana-based medical records company, Medical Informatics Engineering, Inc. (MIE) agreed to pay \$100,000 to the HHS Office for Civil Rights (OCR) to settle charges for alleged violations of the Health Insurance Portability and Accountability Act (HIPAA) Privacy and Security Rules. MIE notified OCR of a data breach in July 2015 that exposed the electronic personally identifiable information (ePHI) of 3.5 million patients. OCR concluded after investigation that MIE did not conduct a comprehensive risk analysis prior to the data breach, as required by HIPAA Rules. In addition to paying the \$100,000 settlement, MIE will adopt a corrective action plan to comply with HIPAA Privacy and Security Rules and will conduct a comprehensive risk analysis.

TRACED Act

On May 23rd, the Senate passed [S. 151](#), the Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act, which enacts stronger enforcement for illegal robocalls. The Act passed the Senate with bipartisan support. Federal Communications Commission Chairman [Ajit Pai](#) and Commissioner [Brendan Carr](#) published statements supporting the TRACED Act and its passage in the Senate. Specifically, the Act would:

- Implement a forfeiture penalty for violations of the prohibition on certain robocalls;
- Remove an annual reporting requirement for FCC enforcement relating to unsolicited facsimile advertisements;
- Require voice service providers to develop call authentication technology;
- Require the FCC to promulgate rules for when a provider may block a voice call based on information provided by the call authentication framework;
- Require the Department of Justice and the FCC to form a working group to study and report to Congress on enforcement of the prohibition of certain robocalls; and
- Require the FCC to initiate rulemaking to help protect consumers from receiving unwanted calls or texts from a caller using an unauthenticated number.

INTERNATIONAL DEVELOPMENTS

Australia Biometric Data Privacy Case

On May 22nd, *Business Insider* published an [article](#) about a lawsuit in Australia which considers if employees are obligated to provide biometric information to their employers. Plaintiff Jeremy Lee was fired from his job at a lumber manufacturer in February 2018 when he refused to provide his employer with his fingerprints to be used to clock in and out of work. The plaintiff filed a lawsuit against his employer for wrongful termination and argued that under the Australia Privacy Act, employers cannot require employees to provide biometric information. The Australian court ruled in favor of the plaintiff and stated that employees have a right to refuse to provide biometric data to their employers without negative consequences.

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