



Director  
Office for Civil Rights  
Washington, D.C. 20201

March 1, 2016

**Via Certified Mail,**  
**U.S. Postal Service,**  
**Return Receipt Requested**

Mr. Marshall S. Ney, Esq.  
Friday, Eldredge & Clark, LLP  
600 S. 52<sup>nd</sup> Street, Suite 200  
Rogers, Arkansas 72758

**Re: Our Reference Number: 09-92774**

### **NOTICE OF FINAL DETERMINATION**

Dear Mr. Ney:

Pursuant to the authority delegated by the Secretary of the United States Department of Health and Human Services (HHS) to the Director of the Office for Civil Rights (OCR), I am writing to inform you that the civil money penalty (CMP) of **\$239,800** against Lincare, Inc. d/b/a United Medical (hereafter referred to as "Lincare") is final. This letter also contains instructions for Lincare to make payment of the CMP amount.

#### **I. Lincare's Request for Hearing**

In OCR's letter dated January 28, 2014 (Notice of Proposed Determination, which is attached hereto), Lincare was notified of the proposed CMP of **\$239,800** and the findings of fact forming the basis for the CMP. The Notice of Proposed Determination notified Lincare of its right to request a hearing on the proposed CMP and gave instructions for Lincare to request a hearing within 90 days. The Notice of Proposed Determination stated that Lincare's failure to request a hearing within that time period permitted the imposition of the proposed CMP without the right to a hearing under 45 C.F.R. § 160.504 or the right of appeal under 45 C.F.R. § 160.548.

Lincare received the Notice of Proposed Determination on January 31, 2014 and requested a hearing before an Administrative Law Judge on April 16, 2014.

## **II. Decision of the Administrative Law Judge**

In accordance with the procedures related to hearings at 45 C.F.R. §§ 160.500 *et seq.*, OCR filed a Motion for Summary Judgment due to Lincare's:

1. Failure to implement written policies and procedures to safeguard records containing protected health information (PHI) that the employees in its 1,200 operating centers use daily to provide in-home services;
2. Failure to reasonably safeguard records containing the PHI of 278 named patients against disclosure to unauthorized persons; and
3. Impermissible disclosure of the PHI of these 278 patients to an unauthorized individual.

On January 13, 2016, Administrative Law Judge Carolyn Cozad Hughes granted OCR's motion for summary judgment and sustained OCR's CMP in the amount of **\$239,800**.

Lincare did not file a notice of appeal or request an extension within 30 days of the date of service of Judge Hughes' decision in accordance with the procedures at 45 C.F.R. § 160.548. As a result, the time to appeal has expired and the decision is final and binding on Lincare.

## **III. Instructions for Payment of the CMP Amount**

Payment of the full and aggregate amount of **\$239,800** is due upon Lincare's receipt of this Notice of Final Determination. Payment can be made by automated clearing house transaction in accordance with the instructions on Exhibit 1 to this Notice.

## **IV. Consequences of Nonpayment**

In the event that payment is not received by certified check or wire funds transfer upon Lincare's receipt of this Notice of Final Determination, the amount of the penalty may be deducted from any sum then or later owing by the United States or by a State agency,

and a civil action may be brought in the United States District Court to recover the amount of the penalty.

**The Legal Basis for This Action**

This action is being taken under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), § 262(a), Pub.L. 104-191, 110 Stat. 1936, as amended, *codified at* 42 U.S.C. § 1320d-5, and under the enforcement regulations at 45 C.F.R. Part 160, subpart D. The Secretary of HHS is authorized to impose CMPs (subject to the limitations at 42 U.S.C. § 1320d-5(b)) against any covered entity, as described at 42 U.S.C. § 1320d-1(a), that violates a provision of Part C (Administrative Simplification) of Title XI of the Social Security Act. See 42 U.S.C. § 1320d-5(a), as amended. This authority extends to violations of the regulations commonly known as the Privacy Rule promulgated at 45 C.F.R. Part 160 and subparts A and E of Part 164, pursuant to Section 264(c) of HIPAA. The Secretary has delegated enforcement responsibility for the Privacy Rule to the Director of OCR. See Office for Civil Rights; Statement of Delegation of Authority, 65 Fed. Reg. 82381 (Dec. 28, 2000).

If you have any questions concerning this letter, please contact Marisa M. Smith, Regional Manager, OCR, Region VI, at (214)-767-4058.

Sincerely,

/s/

Jocelyn Samuels  
Director, Office for Civil Rights

Enclosed:  
Exhibit 1 – ACH Instructions  
Attachment – Notice of Proposed Determination