


BRING YOUR OWN DEVICE
POLICY DRAFTING AND BEST PRACTICES WITHIN THE LEGAL FRAMEWORK
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WHAT IS BYOD?

BYOD = Bring Your Own Device







Wikimedia

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OUTLINE

- 1. What is BYOD?**
 - Overview
 - Why move to BYOD?
- 2. Legal Issues**
- 3. Drafting Your BYOD Policy**
 - Considerations
 - Example
 - Resources

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WHAT IS BYOD?

- Mobile device shift
 - From single use – one for work, one for personal
 - To dual use – one device for both work and personal



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OVERVIEW: A FEW STATISTICS

- 88% of US adults are cell phone owners 
 - Internet, March 2012
 - 46% of those are smartphone owners
 - In May 2011 number was at 35% → ↑ of 11% in less than one year
- 17% of cell phone owners do most of their online browsing on their phone (Pew net net, June 2012)
 - Why?
 - Cell phone is more convenient – 38%
 - Cell phone is always with me – 23%

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OVERVIEW: INDUSTRY PUSH



- **Recognizing the proliferation of mobile technology, HHS has strongly advocated for using mobile devices**
 - Improving public health outcomes → drive down healthcare costs
 - Helping with chronic disease management
 - Reminding people to take medications
 - Reaching rural areas
 - Empowering individuals through education

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OVERVIEW: A FEW STATISTICS



- **But don't forget about tablets!**
 - iPad, Samsung Galaxy, Asus, Google Nexus, Microsoft Surface, Amazon Kindle Fire (*Apple has 60-70% of the market – NY Times*)
 - 31% of the U.S. Internet users owns a tablet (*On line Publishers Association, June 2012*)
 - Expect that by Q2 2013, 47% will own a tablet
 - 74% of tablet owners use their device daily and 60% use it several times a day (*OPA*)
 - Tablet app market - ~ \$2.6B spent in 2012 (up from \$1.4B in 2011)

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OVERVIEW: INDUSTRY PUSH



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OVERVIEW: WHY MOVE TO BYOD?

➤ Why are companies moving to BYOD?

- Employee satisfaction
 - Too many devices
 - Employees want to upgrade
- Efficiency and productivity increases
 - Increased mobility
 - Better integration of work and personal lives
 - Flexibility – employees work in a way that maximizes their productivity



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OVERVIEW: INDUSTRY PUSH

- **Text4Baby**
 - Community partnership (community and government health orgs., wireless carriers, businesses)
 - Free text messages to women (i) who are pregnant or (ii) whose babies are < 1 yr old
 - Provides them with reminders and other information aimed at improving their health and the health of their babies

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OVERVIEW: WHY MOVE TO BYOD?



➤ Case Study: Equal Employment Opportunity Commission

- In 2011 – EEOC's budget for mobile devices (BlackBerry) = \$800K
- In 2012 – Budget reduced to \$400K
- Question?
 - How do you reduce expenses?

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OVERVIEW: WHY MOVE TO BYOD?



- Two-pronged approach to reduce expenses
 1. "Negotiate" with wireless carrier
 - Saved \$240K
 2. Implement a BYOD program

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OVERVIEW: WHY MOVE TO BYOD?



- Why was BYOD a good option?

"75% of our users never made phone calls from their BlackBerrys ... Email is the killer app. They either used the phone on their desk **or they used their personal cell phone to make calls because it's just easier.** We also found there **were a number of zero-use devices.** People have them parked in their desk drawer, and the only time they use it is when they travel." - Kimberly Hatcher, CIO, U.S. Equal Employment Opportunity Commission (EEOC) BYOD Pilot

More efficient use of resources!

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LEGAL ISSUES

- **Are mobile devices different than other technology?**
 - **Yes! Special security challenges!**
 - They're mobile and so are more likely to be lost compared to other devices
 - BYOD = ↑ Risk
 - o Share device with others
 - o User not technically sophisticated
 - o More likely to pick up a virus



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OVERVIEW: WHY MOVE TO BYOD?

- **Why are companies moving to BYOD?**
 - Decrease in overall costs because
 - Reduce device costs (life cycle asset management)
 - o EEOC - W/in first 3 months of 2012, no. of BlackBerry devices cut from 550 to 462 and monthly **recurring costs lowered by 20-30% by optimizing rate plans**
 - Reduce data costs
 - Efficiency increase



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LEGAL ISSUES

- **Yes! Special security challenges!**
 - Multiple devices - lots for your IT team to manage
 - Consider ways employees use devices and the kinds of issues that could arise
 - o Social media
 - o Random websites
 - o Texting patient specific information
 - Jailbroken devices?

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LEGAL ISSUES

➤ Case Study: IBM

- Sophisticated company
 - Founded in 1880
 - More patents than any other U.S. based IT company
 - 19 consecutive years leading annual list of top patent recipients (6,180 in 2011)
 - Employees earned 5 Nobel Prizes, 4 Turing Awards, 8 National Medals of Technology, and 5 National Medals of Science

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LEGAL ISSUES

➤ Case Study: IBM

- Today:
 - 80,000 employees using their own devices
 - 40,000 employees have company issued devices
- Staffing resources – 5,000 employees to manage IT (not just BYOD)

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LEGAL ISSUES

➤ Case Study: IBM

- Adopted BYOD policy in 2010
 - Found many employees
 - Didn't know what their devices were doing
 - Didn't understand the security risks they were creating
 - Why was this a big deal?
 - Loss of confidential information
 - Loss of market advantage



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LEGAL ISSUES

➤ Why the Concerns?

- Compliance concerns
 - Healthcare, finance, insurance highly regulated
 - **Compliance with internal controls to protect confidential information**
- Breach Notification laws
- Data Destruction laws
- Litigation Holds – Where is your data?
- Wage and Hour laws
- Malpractice issues (doctors, attorneys)



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LEGAL ISSUES

➤ Case Study: IBM

- Problems:
 - Public file transfer services (Dropbox)
 - Automatically forwarding e-mail to public web mail services
 - Wi-Fi hotspots
- Solutions:
 - Check devices and disable features
 - Provide substitute products

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LEGAL ISSUES

- Privacy & Security Issues seem to be most prominent at the moment
 - **Numerous** data breaches resulting from lost/stolen laptops
 - Data breaches from devices sold on eBay, Craigslist that are not properly wiped



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LEGAL ISSUES

➤ Industry Example: Healthcare

- Legislators raised concerns with using mobile devices for healthcare
 - Safety
 - Security
 - Reliability of the network infrastructure
- Numerous agencies evaluating issues
 - FDA, FCC, NIST (Dept. of Commerce), FTC, Office of Civil Rights (HHS)



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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- Press Release announcing resolution: September 17, 2012 → *Almost 2 years!*
- Financial penalty: **\$1.5 million**
- Corrective Action Plan: **3 years of monitoring**



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LEGAL ISSUES

➤ State regulators are also paying attention

- California particularly active
 - Feb. – Launched Mobile App Privacy Program (Amazon, Apple, Google, HP, Microsoft, Research In Motion and Facebook all signatories)
 - July - Created a Privacy Enforcement and Protection Unit



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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI did not demonstrate that it conducted a **thorough analysis of the risk to the confidentiality of ePHI on an on-going basis** as part of its security management process from the compliance date of the Security Rule to October 29, 2009 → did not fully evaluate the likelihood and impact of potential risks to the confidentiality of ePHI **maintained in and transmitted using portable devices**

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LEGAL ISSUES

➤ Case Study: Massachusetts Eye and Ear Infirmary

- Data breach: Feb. 19, 2010 – doctor's laptop stolen during a lecture tour in South Korea
 - Impacted data of about 3,500 research participants
- Report to OCR (HITECH): April 21, 2010
- OCR Investigation Initiated: October 5, 2010

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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI's security measures **were not sufficient to ensure the confidentiality of ePHI that it created, maintained, and transmitted using portable devices** to a reasonable and appropriate level from the compliance date of the Security Rule to May 17, 2010

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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI **did not adequately adopt or implement policies and procedures to address security incident identification, reporting, and response** from the compliance date of the Security Rule to March 8, 2010

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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI **did not adequately adopt or implement technical policies and procedures** to allow access to ePHI using portable devices **only to authorized persons or software programs** . . . MEEI did not implement an equivalent, reasonable, and **appropriate alternative measure to encryption** that would have ensured confidentiality of its ePHI or document the rationale supporting the decision not to encrypt

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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI **did not adequately adopt or implement policies and procedures to restrict access to authorized users for portable devices** that access ePHI or **to provide it with a reasonable means of knowing whether or what type of portable devices were being used to access its network** from the compliance date of the Security Rule to March 8, 2010

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LEGAL ISSUES

➤ Problems raised by OCR in Massachusetts Eye and Ear Infirmary are not unique to healthcare

1. Organizations have not evaluated the security risks with using mobile devices
2. Organizations did not implement security protections sufficient for the data transmitted
3. Do not have proper policies and procedures in place
4. Do not have means in place to track mobile devices accessing network

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LEGAL ISSUES

➤ Massachusetts Eye and Ear Infirmary

- What did OCR find to be problematic?
 - MEEI **did not adequately adopt or implement policies and procedures governing the receipt and removal of portable devices into, out of, and within the facility** from the compliance date of the Security Rule to May 17, 2010. MEEI **had no reasonable means of tracking non-MEEI owned portable media devices containing its ePHI** into and out of its facility, or the movement of these devices within the facility

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LEGAL ISSUES

➤ Enforcement Bodies

- Office of Civil Rights (healthcare)
- Federal Trade Commission
 - Focus on protecting **consumers** so no industry off limits
- GLBA Enforcers
 - Depends on the type of financial institution
 - Office of the Comptroller of the Currency, Federal Reserve Board, FDIC, Office of Thrift Supervision, National Credit Union Administration, SEC, FTC
- State AGs

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CONSIDERATIONS



- Understand your IT enterprise
- Understand the economic pros and cons of BYOD to your enterprise
- Understand the risks to your enterprise related to BYOD (formal risk assessment)
- Determine, based on these considerations, whether to adopt BYOD

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CONSIDERATIONS

➤ **Why have a policy?**

- To protect your clients/customers/patients' rights
- To instill professionalism throughout your enterprise
- To protect your organization from liability
- To protect your employees from liability

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CONSIDERATIONS

➤ Stakeholders

- Senior management (resources; institutional support)
- Chief IT officer (sets the strategic direction, including policy)
- IT staff (implements strategy/policy)
- Legal/Regulatory (subject matter expertise/enforcement)
- Human resources (enforcement)

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CONSIDERATIONS

➤ **Regulators are focusing on mobile devices!**

- OCR Actions
- State data breach laws
- GLBA/FTC Safeguards Rule
- PCI DSS
- FDA mobile medical devices/apps
- California encryption mandates



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POLICY CONTENT



➤ **Many Policies Affect BYOD**

- Acceptable Use Policies
- Security Policies (e.g., password, encryption)
- Social Media Policy
- Remote Access Policy
- Remote Working Policy (over 40 hours/wk?)
- Incident Response Policy
- Breach Notification Policy
- Privacy Policies
- Litigation Hold Policy

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POLICY CONTENT

➤ What Kind of Issues Should a *Discrete* BYOD Policy Address?

- http://www.sans.org/reading_room/whitepapers/pda/security-policy-handheld-devices-corporate-environments_32823
- Incorporate other related policies by reference (e.g., privacy, acceptable use, social media, etc.)

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POLICY CONTENT

➤ Who (Scope, Part 2)

- Employees
- Interns
- Students
- Contractors/consultants



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POLICY CONTENT

➤ Why (Purpose)

- Protect clients/customers/patients' privacy
- Protect organization's assets
- Rules of access to/use of organization's networks
- Prevention of privileging/licensing violations
- Delineation of work v. personal use



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POLICY CONTENT

➤ How

- Roles and responsibilities
 - Senior management
 - Chief IT officer
 - CMIO (for healthcare entities)
 - IT staff
 - Legal and HR
 - Users (esp. breach reporting obligations)
- Enforcement

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POLICY CONTENT

➤ What (Scope)

- Supported devices
- State of supported devices (e.g., not jailbroken)
- Reimbursement of costs
- Approved applications
- Other limitations (camera?)



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POLICY CONTENT

➤ When

- Yesterday (if you are already allowing BYOD)
- Today (if you have decided to allow BYOD)



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RESOURCES

- **Federal Gov't** – Bring Your Own Device Toolkit
 - <http://www.whitehouse.gov/digitalgov/bring-your-own-device>
- **HIMSS** – Bring Your Own Device & Consumerization
 - http://www.himss.org/asp/topics_FocusDynamic.asp?faid=652

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