

County of Santa Clara Health System

FairWarning Electronic Health Record Privacy Monitoring System

Annual Surveillance Report: July 1, 2022 – June 30, 2023

1. DESCRIPTION OF HOW THE SURVEILLANCE TECHNOLOGY WAS USED

The County of Santa Clara Health System's (CSCHS) FairWarning Electronic Health Record Privacy Monitoring System (FairWarning System) was used to monitor for potential inappropriate access to the Electronic Health Record (EHR). The Health Insurance Portability and Accountability Act (HIPAA) and various other federal and state privacy regulations require covered entities to only access patient information when necessary to perform health care functions. Any access to patient information that is not related to providing health care could be considered snooping and a violation of the patient's privacy.

This system allowed CSCHS to monitor all users with access to the EHR (HealthLink and NetSmart/Avatar) to ensure that access is business related. The system collected audit trails from the EHR, which tracked every touch a user made in a patient medical record, data from PeopleSoft and Active Directory on all CSCHS users, and this information was loaded into the FairWarning system. The system then analyzes the data and sends any potential inappropriate access alerts to the Health System Ethics, Privacy & Compliance Office (Compliance Office). The Compliance Office reviews the alerts to determine whether the access was appropriate and reports inappropriate access to the applicable federal and state agencies.

The Compliance Office staff are the only users in CSCHS with access to the FairWarning system, aside from the vendor. The Compliance Office managed all access to the system and met regularly with staff to review alerts and ensure the system was functioning properly.

2. DATA SHARING WITH OUTSIDE ENTITIES

The data obtained through the FairWarning alerts may be shared with our privacy regulators as requested to investigate a reported privacy violation. CSCHS, as a covered entity under HIPAA¹ and a licensed hospital under the California Department of Public Health (CDPH)², is required to report any privacy violations to these regulators and must cooperate in any subsequent investigations conducted by the agencies.

During the reporting period, there have been fifteen (15) instances where DHHS and CDPH requested copies of the audit trails for their investigations. As stated above, CSCHS is required to comply with any investigation conducted by our regulators and provide them copies of these audit trails showing the inappropriate access to patient medical records.

¹ 45 C.F.R, Parts 160 and 164

² California Civil Code, Section 56.10-56.16

3. COMMUNITY COMPLAINTS OR CONCERNS

CSCHS values community and customers' feedback and has several ways for the employees, patients, and customers to file their concerns, questions, or complaints with the Customer Relations, Administration, or Compliance Office.

During the reporting period, CSCHS did not receive any community complaints regarding the FairWarning privacy monitoring system.

4. NON-PRIVILEGED INTERNAL AUDITS/POLICY VIOLATIONS

The Chief Compliance Officer-Health System has been designated as the personnel assigned to ensure compliance with this technology. The Chief Compliance Officer has provided a copy of the Surveillance Use Policy (SUP) to the Compliance Office's employees who use the FairWarning system and obtained their written confirmation that they understand it.

Per the SUP, the data must be retained for at least ten years, and the system has only been in place for about nine years so there is no need to delete data at this time.

There were no incidents of inappropriate use of the FairWarning system, and no sanctions were necessary related to use of the technology.

5. EFFECTIVENESS IN ACHIEVING IDENTIFIED PURPOSE

The Compliance Office has used the FairWarning System to successfully monitor staff access to the EHR and ensure that staff are complying with the federal and state privacy rules. There have been instances of inappropriate access that the system alerted the Compliance Office, and the Compliance Office was able to address the inappropriate access and provide additional training and guidance to the employees and departments.

6. PUBLIC RECORDS ACT REQUESTS

The Compliance Office also tracks all California Public Records Acts requests for CSCHS, and there were no Public Records Act requests that involved data gathered by the FairWarning system.

7. ANNUAL COSTS

During the reporting period, the total cost for the FairWarning EHR privacy monitoring service was \$87,669, broken down as follows:

- SaaS-Software Base License – YR3 \$63,477
- SaaS-Data Sources License D – YR3 \$24,192

The cost for the next reporting period is estimated to be \$92,669, broken down as follows:

- SaaS-Software Base License – YR4 \$63,477
- SaaS-Data Sources License D – YR4 \$24,192
- Avatar Address Line 2 addition - \$4,998

The costs come from the Santa Clara Valley Medical Center Budget Unit 921 Enterprise Fund.