

By Toni C. Talbot, SPHR

HIPAA— An Employer's Obligation



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Ah...beware the burden of unintended consequences. This is the Health Insurance Portability and Accountability Act (HIPAA), a great idea that may have some serious administrative consequences for employers.

In 1996, Congress passed the Health Insurance Portability and Accountability Act. This act had five titles; each regulates a different aspect of health care, such as access to health care benefits, fraud and abuse, and group health plans. Title I addressed the portability of an employee's health care coverage, allowing for the coverage of pre-existing conditions to be carried to a new health care plan—a good idea that seems to work well. Title II, Administrative Simplification, is what we are dealing with now. The crux of this title is to encourage the electronic transmission and standardization of health-related paperwork, i.e. billing. It also includes implementation of employee privacy and security issues. This is where you, as employers, need to be concerned with HIPAA.

First, be aware that all the regulations have not been finalized and that as these new regulations are implemented, regulated, and litigated, we will have a better understanding of what we should and should not be doing.

Since the implementation is so new, I contacted Meredith Jagutis, an attorney with the law firm of Foster, Swift, Collins and Smith. Meredith specializes in employee benefits and health care issues and has been studying these regulations for some time now. She has provided me insight on what the average employer needs to know about HIPAA.



Meredith indicated that under HIPAA, the only entities that are required to comply are called "Covered Entities." These include health care clearinghouses, health care plans and health care providers who transmit health information in electronic form. Generally, employers are not considered covered entities. How employers are impacted is through their group health plans. Though technically the group health plan must comply, in most instances the plan is only theoretically a separate entity and it is the employer that needs to shoulder the burdens of compliance.

According to Meredith, at issue is the handling of what is known as Protected Health Information or PHI. This is individual health-related information maintained in paper, electronic and oral form. The privacy issues come into play when this information must be passed on to others for reasons of payment or ancillary services, i.e. lab work, x-rays, etc.

When employers have access to this information through, let's say, the administration of a self-funded plan, then the group health plan must institute privacy policies and procedures. However, this access may also come through the administrative functions, such as your purchased health care

URANCE CLAIM FORM
 Completing or signing this form
 MEDICARE MEDICAID CHAMPUS
 (RIBER) INFORMATION

1. PATIENT'S NAME
 2. PATIENT'S DATE OF BIRTH
 3. INSURANCE TYPE
 4. PATIENT'S SEX
 5. PATIENT'S RELATIONSHIP TO INSURED
 6. INSURANCE TYPE
 7. PATIENT'S RELATIONSHIP TO INSURED
 8. INSURANCE TYPE
 9. DATE OF ACCIDENT
 10. WAS CONDITION RELATED TO A PATIENT'S EMPLOYMENT
 11. INSURANCE TYPE
 12. DATE OF ACCIDENT
 13. DATE OF ACCIDENT
 14. DATE OF ACCIDENT
 15. DATE OF ACCIDENT
 16. DATE OF ACCIDENT
 17. DATE OF ACCIDENT
 18. DATE OF ACCIDENT
 19. DATE OF ACCIDENT
 20. DATE OF ACCIDENT

plan or 125 health care savings account. So, the first step is determining what information, as an employer, you are exposed to through the administration of your plans. This is done by an evaluation of your group plans and how they may expose you to protected health information of individuals in the plan.

Three categories of compliance obligations, four categories of plans will determine HIPAA compliance requirements

Meredith said there are three categories of compliance obligations and four categories of plans that will determine HIPAA compliance requirements:

HIPAA compliance obligations are:

- Plan Documentation Requirements
- Administrative Requirements (including Privacy Policies and Procedures)
- Individual Rights Requirements

The four categories of plans requiring compliance are:

- Fully insured plan that uses only Summary Health Information and does not perform plan administration functions—**do not have to comply**.

- Self-funded plan that receives only Summary Health Information and does not perform plan administration functions—**do have to comply with administrative and individual rights requirements**.
- Fully insured plan that performs plan administration functions—**do have to comply with all compliance obligations**.
- Self-funded plan that performs plan administration functions—**do have to comply with all compliance obligations**.

Note, however, that all four categories of plans must comply with the obligations to refrain from retaliating against those individuals exercising their rights under HIPAA and to not require individuals to waive their rights as a condition of eligibility.

She explained that Summary Health Information (SHI) is different from Protected Health Information, but in order for it to be classified as SHI, it must: summarize the claims history, claims expenses or type of claims experienced by individuals for whom the plan sponsor has provided health benefits under the group health plan, and from which identifying information has been deleted (basically de-identified PHI).

Confused? So am I. Basically, I would recommend first determining if you have to comply and if you do, educating yourself on the requirements of compliance, including bringing in a professional to help you in this endeavor. You should also be aware of compliance deadlines to help you develop a timeline. The first deadline is coming up on April 14, 2003 for privacy rules. This deadline is automatically extended until April 14, 2004 for small health plans (group health plans with annual total premium or for a self-insured plan with claims paid of \$5 million or less).

As you can imagine, I have merely touched the surface of HIPAA. There are so many other employer-related issues that space would not permit me to include them. I strongly suggest educating yourself through seminars, contacting professionals, and going through the due-diligence to assure your company is in compliance. MF

Resources:

- Meredith A. Jagutis, attorney, Foster, Swift, Collins & Smith, P.C., Lansing. Contact her by phone at (517) 371-8142 or by email at mjagutis@fosterswift.com
- Michigan Chamber Seminar: "Health Care Alert: HIPAA/COBRA/Sec 125 Plans/HRAs"
 - January 28, DoubleTree Hotel, Novi
 - January 30, Michigan Chamber of Commerce, Lansing
- To register, or for more information, visit the Michigan Chamber's Web Site at www.michamber.com or call 1-800-748-0344.
- www.shrm.org (Web Site for the Society for Human Resource Management. May require membership.)