

Health Insurance Portability and Accountability Act of 1996

HIPAA Privacy Regulations

Effective date: April 14, 2003

Who is affected? “Covered entities” including healthcare providers, health plans, employers, any company or person who has access to individually identifiable health information or works with people who have access. This last category of covered entity is referred to as a “Business Associate”.

Intent of the Privacy Law:

Make sure that employer representatives who have input into employment decisions do not have access to “Protected Health Information (PHI)” of employees, retirees, and their dependents. HIPAA Privacy Regulations aim to protect access to and the use of PHI.

HIPAA Privacy Regulations do not apply to the following:

Life insurance,
Disability coverage
Workers Compensation
Automobile, Property and Casualty Insurance

What is Protected Health Information (PHI)?

“PHI” is individually identifiable “health information”.

“Health information” is information in oral, written, or electronic form that relates to past, present or future physical or mental health of an individual.

Examples of written or electronic PHI:

- a listing of employees providing demographic information such as age, sex;
- a detailed claims listing with patient identifiable data;
- a report of stop loss claims listing individual claimants;
- a listing of plan members who qualify for or participate in a disease management program.

Examples of oral PHI:

- A health plan representative talks on the phone with an employer representative about a denial of coverage for an employee.

Example of individually identifiable health information that is not PHI:

- An employee talks to an employer representative about his/her health condition or that of a covered dependent. This is not PHI. The information must come from a covered entity such as a health plan to be considered PHI.

What employers must do to comply:

Different rules depending on how the employer funds its health benefits -

- (1) offers health plan(s) on an insured basis;
- (2) self-funds the health plan(s);
- (3) self-administers the health plan(s).

Employers participating in a MA Joint Purchase Groups have "hybrid" funding arrangements.

- Employers pay premium to the JPG
- The JPG pays claims and expenses
- GBS's HIPAA consultant has requested that the Office of Civil Rights issue a ruling on how MA Municipal JPGs should respond to HIPAA privacy regulations. Ruling expected in late December.
- HIPAA consultant, Helena Rubinstein with The Hobbs Group suggests that employers that participate in a JPG follow the regulations for self-funded employers for plans that the JPG self-funds.

A Covered Entity and an Employer cannot receive or use PHI unless

- Covered Entity and Employer receives written authorization from the covered individual. Authorizations must be incident specific.
- When regulations specifically allow, such as in the case of an employer that self-funds, Covered Entity and Employer may use PHI for the following 3 purposes:

<p><u>T</u>reatment <u>P</u>ayment Health Care <u>O</u>perations Public health issues Compliance investigations</p>		"TPO"
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Special Requirements for Employers and Plan Sponsors

- Designate and limit personnel who will have access to PHI – those dealing with health benefits.
- Create firewalls around staff who deal with PHI
- Designate a Privacy Officer (for self-funded employers)
- Create Privacy policies (for self-funded employers)
- Conduct training for staff with access to PHI (for self-funded employers)
- Must send Privacy Notice to employees before April 14, 2003 describing use and disclosure of PHI, health plan member's rights, and the Plan's obligations
- Amend Health Plan Documents (Joint Purchase Group responsibility)
- Establish a system of tracking PHI disclosures