

Mortenson, Matzelle & Meldrum, Inc.

I N S U R A N C E

“EDUCATION THROUGH INFORMATION”

GOVERNMENTAL COMPLIANCE UNIT

HIPAA – PRIVACY

WHAT IS IT?

A law that protects the personally identifiable health information of individuals

WHEN IS IT EFFECTIVE?

For **Large** Plans, defined as those having more than \$5 million in premium for Fully-Insured plans or more than \$5 million in claims paid (not to include Administrative fees, PPO fees etc...) for Self-Funded: **April 14, 2003**

For **Small** Plans, defined as those having \$5 million or less in premium for Fully-Insured plans or \$5 million or less in claims paid (not to include Administrative fees, PPO fees etc...) for Self-Funded: **April 14, 2004**

WHO MUST FOLLOW THIS RULE? (A.K.A. COVERED ENTITY)?

Health Care Providers – An entity that transmits, maintains, or provides health care services

Health Care Clearinghouses – An entity that converts or processes health information from a non-standard format to a standard format

Health Plans – Any Individual or Group Health plan including:

- Medical Coverage
- HMO Membership
- Vision Care
- Dental Care
- Prescription Drug Programs
- Medical Expense Reimbursement Plans & Health Flexible Spending Accounts
- Health Insurance Carriers (Fully-Insured)

WHAT PLANS ARE NOT AFFECTED BY THIS RULE?

- Workers' Compensation
- Disability (Life/AD&D, LTD, STD)
- Liability
- Prescription Drug Discount Programs
- Premium Only
- Dependent Care Assistance
- Small (less than 50 employees enrolled) Self-Funded plans with no Third Party Administrator

IS THE EMPLOYER A COVERED ENTITY UNDER THE RULE?

Technically No. However, the Health Plan is a Covered Entity and the Health Plan is the responsibility of the Plan Sponsor, a.k.a. the employer. Self-Funded employers will have more responsibilities under the rule than Fully Insured employers. However, both will have some procedural changes.

This document is intended to be a “brief” summary of the regulation discussed. This is not meant to be legal advice and Mortenson, Matzelle & Meldrum, Inc. assumes no responsibility for liability in the event of an error.

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EXACTLY WHAT HEALTH INFORMATION IS PROTECTED?

Protected Health information, referred to in the Rule as PHI is:

- Health information that is in any form: written, oral, or electronic
- Health information used or disclosed by a Covered Entity
- Health information that relates to:
 - A person’s past, present or future condition
 - Provisions for the treatment of the condition
 - Payment of a past, present or future condition

AND

- The Health information is “individually identifiable”, or provides a reasonable basis that the individual may be identified

NOTE: De-identified or summary health information is OK to receive and review because the “individually identifiable” information has been removed.

IS ANY INFORMATION NOT PROTECTED?

There is the understanding that certain business decisions will need PHI, so the following PHI does not need employee authorization in order for the information to be used and disclosed. **(TPO)**

- **Treatment (T)**
 - Consultation between physicians regarding patient care
 - Referral of patient by physician to physician
 - Coordination of health care and related services by physicians or third party
- **Payment (P)**
 - Determining eligibility
 - Adjudicating claims
 - Coordination of benefits
- **Health Care Operations (O)**
 - Case management
 - Business planning and development
 - Health insurance contracting

ARE MY EMPLOYEES INFORMED OF THIS IN ANY WAY?

Yes. Covered Entities must provide a **Notice of Privacy Practices** to individuals. This notice must explain any uses and disclosures of PHI and the legal duties of the covered entity.

- Self-Funded employers must provide this notice.
- Fully Insured employers that do not have access to PHI do NOT need to provide this notice. The insurance carrier will provide the notice in this case. However, if you have access to PHI, then you must maintain the notice and give it to individuals when requested.

WHEN DO I HAVE TO PROVIDE THIS NOTICE & TO WHOM?

The notice must be provided to the covered employee and is considered effective for all covered dependents. If there is a dependent that does not live with the employee, the notice must be mailed to him/her. Provide the notice at the following times:

- No later than the Privacy Regulations compliance date. (April 14, 2003 or April 14, 2004)
- At the time of the employee’s enrollment
- Upon request of an employee (or covered dependent)
- Within 60 days of a material change of the notice

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WHAT ABOUT OTHER BUSINESSES WE WORK WITH THAT HAVE ACCESS TO OUR EMPLOYEES’ PHI?

There are certain organizations or people that may also have access to PHI. These other organizations are known in the rule as Business Associates. Examples of Business Associates are your attorney, insurance agent/broker, section 125 administrator, and third party administrator

The Health Plan must have a Business Associate agreement in place with all of its Business Associates. This agreement allows for the transfer of PHI and knowledge of PHI. The agreement must have several components, some of which are:

- Describing the procedures, uses and disclosures of PHI that are allowed.
- Business Associates must agree not to disclose PHI and must have safeguards in place.
- Business Associates must report any improper use or disclosure to the Covered Entity
- The Covered Entity has the right to terminate the contract at any time if the contract is violated.

Covered Entities have up to one year after the compliance date to update any existing contracts with Business Associates.

NOTE: This is not an all-inclusive list.

ANYTHING ELSE?

Why yes, employers do have the right to see PHI of their employees/dependents. However, in order to be able to “see” this information the Health Plan must be amended to:

- State who has access to this information (title, not name). Provide security so that only the titles mentioned actually will have access to use and disclose PHI.
- Describe the procedure that will be used if noncompliance issues arise (such as someone not listed using, disclosing or seeing PHI).
- Describe when PHI may be used and disclosed.
- State that this PHI may only be released once Certification has been made to the plan.

CERTIFICATION? Employers must provide a Certification of Compliance document to the Health Plan documents. This certification states that they are in compliance with the HIPAA Privacy Rules and that the Health Plan has been amended as such.

WHAT DO EMPLOYERS (YOU) NEED TO DO RIGHT NOW?

- ___ Determine the size of the health plan (including dental and vision).
- ___ Name a Privacy Official (this person will be responsible for the implementation of this rule, or will oversee a committee that is responsible for the implementation of this rule).
- ___ Review existing and potential uses/disclosures of PHI.
- ___ Identify anyone at your company who will be using or disclosing PHI.
- ___ Identify anyone outside of your company to whom you may disclose PHI (e.g. Insurance Agent/Broker, Attorney, TPA etc...).
- ___ Put the policies you already have about personal health information into procedures specific to the manner in which PHI is used, received, housed or disclosed.
- ___ Talk with your TPA or insurance carrier about where they are at regarding HIPAA Privacy and if they have developed any documents for their clients to use or review.

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HIPAA CODE SETS & TRANSACTIONS (EDI)

WHAT IS IT?

A law that affects how providers, plans, and clearinghouses “talk” to each other. Currently a provider have its own “code” or language that a clearinghouse will “translate” in order for a carrier to understand and process it. This law requires everyone to speak the same language.

WHEN IS IT EFFECTIVE?

For **Large** Plans, defined as those having more than \$5 million in premium for Fully-Insured plans or more than \$5 million in claims paid (not to include Administrative fees, PPO fees etc...) for Self-Funded: **October 16, 2002 (unless an extension is filed, then it becomes October 16, 2003)**

For **Small** Plans, defined as those having \$5 million or less in premium for Fully-Insured plans or \$5 million or less claims paid (not to include Administrative fees, PPO fees etc...) for Self-Funded: **October 16, 2003**

WHO MUST FOLLOW THIS RULE?

Covered Entities (Health Plans, Health Care Providers, Health Care Clearinghouses) that transmit the following data electronically:

- Health claims
- Enrollment and disenrollment in a health plan
- Eligibility for a health plan
- Health care payment and remittance information
- Health plan premium payments
- Health claim status
- Coordination of benefits

IS THE EMPLOYER A COVERED ENTITY?

Technically No. However, the Health Plan is a Covered Entity and the Health Plan is the responsibility of the Plan Sponsor a.k.a. – the employer.

WHAT IF I DO NOT PERFORM A COVERED TRANSACTION ELECTRONICALLY?

If a plan does not perform a covered transaction electronically it does not “technically” have to comply with the regulation. If, at some point the plan does begin to transmit or receive electronic transactions that are covered under the regulation, the plan then needs to be in compliance with the regulations.

HIPAA – SECURITY

WHAT IS IT?

A regulation that sets requirements regarding the security of health data transmitted electronically.

WHEN IS IT EFFECTIVE?

There is currently NO compliance date. Proposed regulations came out August 12, 1998 but no final regulations have been published yet. It is anticipated that the federal government will issue final rules on December 27, 2002.

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