

For Your Most Important Resource—The Human Resource

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HIPAA

KEEPING HEALTH INFORMATION PRIVATE

Medical information has many times for many years been used unfairly against people, particularly in employment. Since 1911, when the State of Wisconsin started the first Workers Compensation (WC) program through the 1980s, it was common practice to use the WC and medical records to refuse employment and to terminate employees. Any medical condition was cause to refuse employment even if it had no impact on the individual's ability to perform the job. The Americans With Disabilities Act (ADA), in 1990, was partly created to prevent that.

However the use of Private Health Information (PHI) still creates many serious problems. Insurance companies turn down employees (and non-employees) for health insurance, pre-existing conditions are not covered and personal health information is passed on to marketers, employers and the general public. To deal with these, as well as several other concerns, Congress, in 1996, created the Health Insurance Portability and Accountability Act (HIPAA).

On the other side of this issue, there are many who feel that they are being adversely

affected by HIPAA. Benefit professionals fear, that this is shaping up to be another barrage of paper work. Employers are still reeling from the complications and the increase in paper work resulting from the Family and Medical Leave Act (FMLA). Physicians and medical groups have filed suit to overturn the HIPAA rules. The suits maintain that the regulations are burdensome unclear, costly and unconstitutional. They charge that the regulation is an unconstitutional use of congressional authority.

The HIPAA regulation is designed to do many things. It allows employees to continue their benefits as they move from one job to another, standardizes certain health care practices and makes several other changes to the health care delivery systems. As of April 14, 2003, a new section of HIPAA went into affect. This issue of Personnel Notebook will concentrate on this newest issued section of the act which is on the privacy of personal medical records, officially titled Private Health Information (PHI).

What Is HIPAA?

The Health Insurance Portability Act (HIPAA) was passed in 1996. Its primary purpose was to allow employee health care coverage to continue after leaving a job. But Title II of the act, preventing fraud and abuse, received very little attention. One section of Title II was created to simplify health administration by using electronic transfer of PHI.

But even deeper into the information on electronic transfer was a little noticed section called 'Privacy and Protection'. After the passage of the bill it became clear that, like many employment regulations, The 'Privacy and Protection' Clause would require further legislation to patch up some problems and to clarify the intent.

Fundamentally, the regulations state that if an organization ('a Covered Entity') has possession of a person's health or medical records, that organization must protect the privacy of that information. This is for medical information only and does not cover life insurance policies. As an employer you are also required to inform your employees of their rights under HIPAA.

Who Is Covered by HIPAA?

HIPAA is regulated by the U.S. Department of Health and Human Services. It receives complaints, handles investigations and enforces the act through their Office of Civil Rights.

Affected companies are called 'Covered Entities'. They are:

1. Health Care Clearinghouses Companies that translate health care information, such as billing services and re-pricing companies.
2. Health Plans Insurance companies, providers of insurance, HMOs, Medicare and group health plans.

3. Health Care Providers Persons or organizations that provide, are billed for, or paid for health care services.

Employers are not automatically covered. If you do not provide health care coverage to your employees, you are not covered. If you do provide coverage, then the health care provider you use is covered. You are mandated to assure the proper compliance of that provider.

Note that Workers Compensation and disability programs are not required to comply with the act. Therefore they are allowed to obtain and distribute medical information. as they require.

Although these rules apply equally to all 'Covered Entities', small health plans (those with less than \$5 million in claims or premiums are not covered by the plan until April 14, 2004).

In addition, the group health plan must have 50 or more participants or be administered by someone other than the employer. Therefore, an employer who has 49 or fewer participants and is self-insured is not required to comply with HIPAA.

What Rights Does The Employee Have?

The employee has a right to see or get a copy of information you have regarding their PHI They may correct any inaccurate information or be referred to the source of that information.

They may request additional restrictions on the use of that information. You are not required to grant that restriction but you need to allow the request and to consider it.

They may request that any information regarding their PHI be communicated through other means. For example they may request that no related messages be left on their office or their home phone. That request must be granted

They may receive a record of all disclosures of their PHI including what was divulged and to whom.

They are also entitled to a copy of their rights and can get additional paper copies on request.

Any individual who wishes to file a complaint regarding a violation of their HIPAA rights, may file that complaint at 'OCRcomplaint@hhs.gov'. Or use the form shown on the back page. To locate the address in your area, you can obtain it at the web site or contact your local office of the U.S. Department of Health and Human Services, Office of Civil Rights.

What Am I Required To Do?

If you are a provider of health care coverage or are in any way a 'Covered Entity', you must do the following:

- 1 Inform your employees of their rights under the act.
- 2 Identify your possession of any medical information that exists in your company. Arrange for the absolute protection of this information.

There are many ways to comply with no. 2 above:

A You must separate all PHI from any employment related records such as personnel file or payroll records. This may even mean creating a physical wall, an enclosed office or a locked file cabinet to create that separation.

B You might delegate the handling of all such information to one person who does not deal with employment related issues. That person may not divulge any employee's PHI.

C You may outsource all benefit administration to a vendor source. However, in doing so you must enter into a written understanding with that vendor. This understanding is called a 'Business Associate Agreement'. That agreement binds the vendor to all the appropriate requirements of the act. As

the employer, you must assure that compliance.

D If you are self insured, you may want to reconsider whether or not you should adopt a vendor for an outside controlled plan.

Are There Any New Problems Created By The Act?

Beyond the paperwork, and the potential changes in procedures, there are several concerns that arise out of provisions in the act.

A panel of experts at the HIPAA summit in Washington D.C. stated that employers should expect that many employees upon termination of employment will be filing lawsuits alleging that knowledge of their medical condition prompted the termination.

Emergency events, such as the 9/11 disaster, normally include a posting of all the injured or missing victims for anxious relatives. Such postings are not allowed under HIPAA without a signed approval of the victim in advance. Even with that approval there are severe limits to what can be released.

When visiting your Doctor's office, a registration list showing all patients will no longer be allowed. Patients may no longer be called by their last names when being called in to see the Doctor. First names or numbers can be used.

Individuals will generally not be allowed to pick up prescriptions for a home-bound relative.

The medical condition of an accident victim hospitalized in a distant city cannot be divulged to the relative calling by phone.

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**HIPAA HEALTH INFORMATION
PRIVACY COMPLAINT FORM**

Your Full Name: _____

Address: _____

Phone Number: _____

Fax Number: _____

E-mail Address: _____

Date: _____

Information about the Suspected Privacy Violation

Entity* that is the subject of this complaint: _____

(*The individual or organization that you believe violated your privacy. This may be an individual health care provider or organization, health plan, or health care clearinghouse.)

Address: _____

Phone Number: _____

Date of violation: _____

Describe the privacy violation (attach additional pages, if necessary): _____

