



ERISA AND BENEFITS ALERT

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YOUR GROUP HEALTH PLAN MUST COMPLY WITH THE HIPAA ELECTRONIC TRANSACTIONS RULE BY OCTOBER 16, 2002

Are you ready? Employers offering group health plans must comply with HIPAA's administrative simplification regulations, and the first compliance deadline is just weeks away. If your group health plan will not be in compliance, you must file for an extension by October 15, 2002. We have put together the following answers to frequently asked questions about the extension. We also include a decision tree to help you comply with this requirement in a timely fashion.

HIPAA ELECTRONIC TRANSACTIONS FAQ FOR EMPLOYER GROUP HEALTH PLANS *(See Attached Decision Tree)*

Does my company need to comply with HIPAA's electronic transactions rule?

If your company offers health benefits to your employees through a group health plan, including a health flexible spending account (FSA), it will need to comply with all of the rules under HIPAA's Administrative Simplification provisions. Those rules include the Standards for Electronic Transactions.

What is the compliance deadline?

October 16, 2002, unless your company offers only small health plans, in which case the compliance date is October 16, 2003. (See information below on small health plans.)

I've heard that an extension may be available for compliance with the electronic transactions rule. How does my company obtain such an extension?

There is a one year extension to October 16, 2003 available upon request (unless your plan is a small health plan, in which case your compliance deadline is already October 16, 2003). To obtain such an extension, your company, or someone on its behalf, must file an electronic transactions compliance plan with HHS for each of its group health plans or each set of related group health plans. For more information, go to:

<http://cms.hhs.gov/hipaa/hipaa2/ASCAForm.asp>

HHS prefers electronic filing, which you may accomplish through this web site. You also may submit a paper compliance plan, but must include all the information provided in the model compliance plan on the web site.

What is the deadline for filing for an extension?

The extension must be filed before the compliance deadline of October 16, 2002. Accordingly, all extensions should be filed no later than October 15, 2002. Remember, small health plans do not need to file – they already get an extra year to comply.

What kind of information is required in the compliance plan?

The information required is minimal. HHS's instructions state that it should take only 15 to 20 minutes to complete the on-line form.

Will my company's request for an extension be granted?

If a compliance plan(s) is filed for your company's group health plan(s), the extension is automatic.

Who can file on my company's behalf?

Anyone who is authorized to file documents on behalf of the group health plan may file for the extension. This can include someone employed by your company, your

group health plan's third-party administrator (TPA), its health insurance issuer, or its HMO.

My company's health insurance issuer or HMO filed for their own extension – does this filing give my company's group health plan an extension?

Not necessarily. Your company's group health plans will be eligible for an extension only if (1) it authorized the insurer or HMO to file for it, and (2) the insurer or HMO listed your company's group health plan separately on the extension application.

If my company files for the electronic standards extension, does it also get an additional year to comply with HIPAA's privacy requirements?

No. The compliance deadline for the privacy requirements is April 14, 2003 (April 14, 2004 for small health plans), and is not affected even if your company obtains the extension for electronic standards.

What is a small health plan? Does this definition apply to the privacy rules too?

A small health plan is defined as a plan with annual receipts of \$5 million or less. The preamble to the privacy regulations explains that for group health plans, annual receipts means "pure premium." HHS has just issued guidance on how to determine small health plan annual receipts. A fully-insured plan should use total premiums

paid for health benefits. A self-insured plan should use the total amount paid for health care claims. Stop-loss premiums should not be included. A plan that is partly insured and partly self-insured should combine the measures. The applicable period is the last full fiscal year. There is a different measure for health plans that file tax returns. This guidance applies for all of the HIPAA Administrative Simplification Rules, including privacy.

Is the \$5 million threshold for "small health plans" applied to each of my company's group health plan separately?

It appears that the \$5 million threshold applies to each group health plan separately.

How do I know how many group health plans my company has?

The regulations provide no guidance on determining the number of group health plans. One approach might be to use the number of IRS Form 5500s your company files as a guide. An approach for non-ERISA plans might be to consider how the plans are disclosed to participants.

Note: Some companies may also be covered by the regulations because they provide on-site clinics or because they are health care providers, health insurers, or health care clearinghouses. If so, they will have HIPAA obligations in addition to the ones described in this FAQ.

WHAT'S NEXT ON THE HIPAA HORIZON?

After you've complied with the HIPAA electronic transactions rules (or filed for an extension), you should turn your attention to the HIPAA privacy rules. Group health plans must be in compliance with those rules by April 14, 2003 (unless you are a small group health plan, as described above in the FAQ, in which case you have until April 14, 2004).

Self-funded plans generally must meet all the obligations of the privacy rules. To help employers with self-funded group health plans comply, our ERISA and HIPAA attorneys are providing a Privacy Compliance Kit for Self-Funded Group Health Plans. The kit combines (1) on-site training and evaluation, (2) tailored model documents and a tailored implementation analysis, and (3) follow-up support, at a low fixed cost. Please contact us as privacy@milchev.com for more information.

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HIPAA Electronic Transactions Decision Tree
For
Employer Group Health Plans
See Accompanying Frequently Asked Questions

