



HEALTH AND EMPLOYEE BENEFITS UPDATE March 2004

BY APRIL 14, 2004, ALL GROUP HEALTH PLANS MUST COMPLY WITH THE HIPAA PRIVACY RULE

For employers that sponsor group health plans that are “small health plans,” April 14, 2004 will be the date that their plans must come into compliance with the HIPAA Privacy Rule. Larger plans—those with more than \$5,000,000 in annual receipts—have been obligated to comply with the Privacy Rule since April 14 of last year. The employer-sponsored health benefit plans that must comply with the Privacy Rule include cafeteria plans with flexible spending health benefit accounts. The only health benefit plans that will not have to comply with the Privacy Rule after April 14 are those with less than 50 participants that are administered solely by their employer-sponsors. Those plans are not subject to HIPAA at all.

The Privacy Rule restricts how a group health plan may use and disclose information about plan enrollees, including restricting the information that may be given to the employer sponsoring the plan. After its compliance date, a group health plan and its administrator or insurer will be allowed to disclose enrollment data to the employer and summary health information if the employer requests it to obtain premium bids for health insurance coverage or to modify, amend, or terminate the plan.

But an employer that wants other kinds of protected health information so that it may perform plan administration functions must amend the plan document to promise to safeguard the protected health information. These safeguards must include the employer’s promise never to use protected health information for any employment-related action or decision or for any other benefit or benefit plan.

The Privacy Rule requires a group health plan that is self-funded in part or whole or that creates or receives protected health information beyond enrollment data and summary health information to undertake a variety of administrative requirements, including to: (a) adopt written privacy policies and procedures, (b) distribute a notice of privacy practices, (c) designate a privacy official (d) train workforce members on the policies and procedures, (e) obtain compliant written contracts with third party administrators and other business associates, (f) provide individuals with access to, amendment of, and an accounting for certain disclosures of protected health information, (g) have a privacy complaint procedures, (h) implement reasonable administrative, physical and technical safeguards for protected health information, and much more. These requirements apply to cafeteria plans with flexible spending health benefit accounts, unless the cafeteria plan has less than 50 participants and is administered solely by the employer (with no third party administrator involvement).

A group health plan that provides health benefits *solely* through insurance contracts and that creates or receives no more than enrollment data and summary health information must comply with the Privacy Rule, but has significantly reduced administrative requirements.

A group health plan’s Privacy Rule compliance obligations can be complex and will vary depending on its particular facts and circumstances. Employers should seek the advice of competent professionals to ensure that their group health plans are in proper compliance.

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Our Health Law and Employee Benefits Practice Groups include nationally recognized experts on HIPAA compliance. For information, please contact Jack Rovner (312-269-8014, jrovner@ngelaw.com), co-chair of the Health Law Group, or Patricia Cain (312-269-8032, pcain@ngelaw.com), chair of the Employee Benefits Group.

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