

HIPAA Bulletin

December 2002

INTRODUCTION TO HIPAA PRIVACY RULES FOR EMPLOYERS THAT SPONSOR GROUP HEALTH PLANS

What is HIPAA?

HIPAA stands for the Health Insurance Portability and Accountability Act of 1996. One aspect of the law relates to the privacy of health information. This is commonly referred to as the Privacy Rule.

Who is covered by the Privacy Rule? Are there any exceptions?

In addition to health care providers and health care clearinghouses, the Privacy Rule covers health plans, including employer sponsored group health plans. The only group health plans that are exempt from HIPAA are those that have fewer than 50 participants and are self-administered.

When is the compliance date?

The compliance date for most providers and health plans is April 14, 2003. However, a "small" health plan (one with annual receipts of \$5 million or less), has until April 14, 2004 to comply.

Does it matter whether my group health plan is self-funded or fully insured?

A fully insured group health plan will have a lighter compliance burden than one that is self-funded. This is usually because the insurance company or HMO has the most interaction with employee health information and, as a result, bears the majority of the compliance responsibilities. A self-funded group health plan, on the other hand, presumptively has access to more health

information and assumes additional compliance requirements.

What obligations will HIPAA impose?

The scope of your company's responsibilities will vary depending on two main factors: (1) whether your plan is self-funded or fully insured and (2) the scope of health information about your employees and their dependents you receive as a plan sponsor. Generally, your company (as the sponsor of the group health plan) will have to do the following:

- ✓ Follow detailed rules governing the access to, and use/disclosure of, employee and dependent health information;
- ✓ Implement policies affording employees and dependents certain rights with respect to their health information; and
- ✓ Adopt a variety of other administrative requirements including: creating a health information policy and procedure manual, training workforce members on the new policies and procedures, designating a Privacy Official, and distributing a Privacy Notice.

What is a Privacy Notice?

A Privacy Notice is a detailed document that explains to your employees and their dependents how the group

health plan uses their health information and outlines any external disclosures that are routinely made. The Privacy Notice must be distributed to all current employees enrolled in your group health plan by the compliance date, and upon enrollment to all new enrollees thereafter.

Will we need to revise our service agreements with vendors and other contractors?

You may need to, depending on whether or not your service providers create or have access to employee/dependent health information. Those vendors or contractors that create or have access to such information, such as a third-party administrator for a self-funded group health plan, are called “business associates.” A health insurer or HMO, however, is not a business associate. A

business associate must contractually agree to provide the same level of protection for the information as does the group health plan. This can be done by amending a current agreement or entering into a separate business associate agreement.

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About Vedder Price

Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 200 attorneys in Chicago, New York City and Livingston, New Jersey.

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About the Vedder Price HIPAA Task Force

Earlier this year, Vedder Price assembled a multidisciplinary HIPAA Task Force, comprised of members of the Health Law and Employee Benefits Practice Groups to provide guidance to clients affected by the recently finalized Privacy Rule implementing certain aspects of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”). The attorneys serving on the HIPAA Task Force have substantial experience representing a broad range of clients regarding health law, employment law, and employee benefits issues. This experience and perspective enables Vedder Price to provide strategic advice and practical guidance to health providers, insurers and employers regarding the new responsibilities and challenges created by HIPAA and its regulations pertaining to the privacy and security of health information.

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