

HIPAA Notice of Privacy Practices Mailing - Large Health Plans April 14, 2006

The Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules require a group health plan provide participants a notice of the availability of the Notice of Privacy Practices (NPP) and how to obtain the notice, once every three years. Large health plans must distribute the availability notice by April 14, 2006, if they have not already done so. A large health plan is defined as a plan that spends over \$5 million a year on health care premiums or claims.

Privacy Notice in General

Large health plans were required to provide participants under their group health plan with a statement of their HIPAA privacy rights by April 14, 2003. Small health plans were to comply by April 14, 2004.

The obligation to provide a privacy notification (and the reminder notification) depends on whether the employer/plan sponsor has access to Protected Health Information (PHI). A fully insured group health plan where the plan sponsor has no access to PHI, except for summary health information and enrollment information, has no responsibility to provide privacy notices to participants. The obligation falls on the insurer to comply. A fully insured plan that has access to PHI must maintain a privacy notice and provide the notice by request. However, the insurer maintains the primary notification obligation to participants. A self-insured plan is required to issue its own privacy notification and reminder notification.

The privacy notice must describe the following:

1. The uses and disclosures of PHI that may be made by the covered entity;
2. The individuals rights; and
3. The covered entity's legal duties with respect to PHI.

The privacy notice must be issued at the following times:

1. No later than the initial compliance deadline (for large health plans April 14, 2003, small health plans April 14, 2004);
2. On an ongoing basis after the compliance date at the time of the individual's enrollment on the plan;
3. Upon request;
4. Within 60 days of a material change to the notice.
5. **In addition, every three years health plans must send a reminder notice to individuals who are covered under the plan that the privacy notice is available and how to obtain the notice. (This requirement is the upcoming deadline.)**

The privacy notice should be delivered in the following manner:

1. If the covered entity has a website containing information about benefits, the notice should be posted and made available at this website;
2. Actual delivery to individuals covered under the plan. This may be included in other written materials, such as the SPD or enrollment materials. The notice cannot be emailed to the participants unless the participant has agreed beforehand to receive the notice in this manner.
3. A plan sponsor must comply with the actual delivery requirement; the website posting alone is not sufficient delivery of the privacy notice.

Availability Reminder Notification

As indicated above, April 14, 2006 is the deadline for large health plans to provide a reminder of the availability of the NPP (if they haven't already done so) to participants under the plan. Plans that included the NPP in their annual enrollment materials within the last three years have satisfied this notification requirement.

Health and Human Services (HHS) provides guidance as to the plan sponsor's flexibility in providing this notice. A plan sponsor may:

1. Resend the full Notice of Privacy Practices (NPP);
2. Mail a separate reminder regarding the NPP availability and how to obtain a copy; or
3. Include this information "in a plan-produced newsletter or other publication."

The reminder notice is provided to the named insured on the plan. There is no requirement to separately notify dependents if the dependents are covered under the health plan. For example if an employee of a company and her three dependents are covered under a single health plan policy, that health plan can satisfy the reminder requirement by sending information concerning the availability of the NPP to just the employee, rather than to the employee and each dependent.

(HHA FAQ March 6, 2006). <http://www.hhs.gov/ocr/hipaa/>

A model notice of the availability of the Notice of Privacy Practices has not been provided by the government. Therefore plan sponsors should draft the reminder notice in a manner consistent with the information provided on the Department of Health and Human Services website www.hhs.gov/ocr/hipaa (see above). Attached is a generic sample notice to be used for illustrative purposes. It is recommended, as with all notices, you review the content and distribution manner with legal counsel in order to ensure it satisfies the requirements of your plan. Small health plans have until April 14, 2007, to comply with the above notice requirement.