

DEADLINE FOR COMPLIANCE WITH HEALTH INFORMATION PRIVACY REGULATIONS IS LOOMING: GROUP HEALTH PLAN SPONSORS MUST PREPARE

By Jeff Knapp

Final regulations protecting the privacy of individuals' medical information were included in the flurry of major regulatory pronouncements issued in the waning days of the Clinton administration. Hopes in some quarters that a Republican administration would rescind or ease the regulatory burdens of the privacy regulations have not been realized. In fact, in December 2001, Congress codified into law the April 14, 2003, deadline for compliance with the privacy regulations.

April 2003 sounds like it's a long way off, but given the scope of the regulations and the requirements imposed on health plans and their sponsors, we expect it will take at least six months to design and implement appropriate compliance procedures. Therefore, it's not too soon to work toward compliance.

The privacy regulations apply to virtually all group health plans, including governmental and church plans that are exempt from many federal benefits laws (e.g., ERISA). Although the privacy regulations directly apply only to health plans, health providers, and data intermediaries called health care clearinghouses (so-called "covered entities"), they also apply indirectly to third parties who contract with or receive information from the covered entities, including third-party claims administrators. These third parties are called "business associates." Health plans must insure that their business associates protect the privacy of health information, and their agreements with business associates must document these protections.

In their day-to-day administration, health plans often share protected health information with employees of the plan sponsor (e.g., in the plan sponsor's Human Resources or Benefits department). Again, although the plan sponsor is not itself a "covered entity," the health plan is. Therefore, for this essential sharing of information to occur, the regulations require a number of safeguards, starting with appointing a "privacy officer" and including keeping an accounting of all disclosures of protected health information. Developing and implementing safeguards and documenting compliance will require a significant commitment of time and resources.

What This Means For Employers

We recommend that plan sponsors undertake a three-phase approach to compliance. The first phase is investigation: determining what health information is obtained, how it is used, and who uses it. The second phase is developing policies and procedures to comply with the privacy regulations. The third phase is implementation: documenting, communicating, and applying the privacy policies and procedures.

Please contact Jeff Knapp, of our Employee Benefits Department, for more information. Jeff is leading our efforts to assist clients in complying with these new requirements and can be reached at (503) 778-2100 or Email: knappj@lanepowell.com.

Because of the changing nature of this area of the law and the importance of individual facts, this information is not meant to provide legal opinions and is not a substitute for the advice of legal counsel.

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