

08.22.2003

ANOTHER HIPAA DEADLINE APPROACHES

Employers who sponsor group health plans breathed a sigh of relief after gearing up to comply with the Privacy Rules under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) by the April 14, 2003, deadline. Now there’s another fast-approaching HIPAA deadline - the October 16, 2003 deadline for conducting electronic transactions according to HIPAA standards. These standards are typically referred to as the electronic data interchange or EDI standards.

Who Must Comply

Like the Privacy Rules, the EDI standards apply to covered entities. All group health plans must conduct standard transactions in accordance with the EDI standards. (Health care providers, even though they are covered entities, can avoid the EDI standards by conducting only paper transactions.) The standard transactions for which EDI standards have been adopted are:

- Claims and equivalent encounter information
- Payment and remittance advice
- Claim status inquiry and response
- Eligibility inquiry and response
- Referral certification and authorization inquiry and response
- Enrollment and disenrollment in a health plan
- Health plan premium payments
- Coordination of benefits

How to Comply

Group health plans must conduct covered transactions in accordance with the EDI standards if any entity (whether or not a covered entity) requests use of the EDI standards. We anticipate that most employer-sponsored group health plans will comply with the standards through business associates (such as third party administrators), health care clearinghouses (entities that convert data into standardized electronic formats), or insurance carriers (for employers with fully insured plans). Plan sponsors should contact their business associates now to determine their preparedness for the October 16 compliance date.

Questions to Ask Business Associates

Plan sponsors relying on third parties to comply with the electronic transactions rules should ask the third parties:

- When will your systems be HIPAA-compliant?
- Which HIPAA transactions do/will you conduct on a HIPAA-compliant basis and which transactions will you not be able to conduct on a HIPAA-compliant basis?

- Do we need any particular software updates to use or access your HIPAA-compliant software and what are the system requirements?
- What training and support services are available?
- Is there a system for converting data from non-compliant to HIPAA-compliant formats?
- What data will we need to collect?
- Has a third party certified your software as HIPAA-compliant?
- What is your contingency plan if your systems are not compliant by October 16?

Employers are Not Legally Required to Comply

Because an employer that sponsors a group health plan is not itself a covered entity, the employer itself is not legally required to transmit data according to the EDI standards. The employer may transmit data in any format agreed to by the recipient of the data. Our experience is that many covered entities such as health insurance issuers are contractually requiring employers to transmit data in HIPAA-compliant formats. While insurers are free to make this demand as a contractual matter, the demand does not impose additional legal requirements on employers.

Although not legally required, employers may wish to voluntarily comply with the HIPAA standards in the expectation that they are-or in the near future, will become-the industry standard. Being able to “speak” HIPAA will ensure that the employer is able to communicate with all health care plans and providers (and their business associates), giving the employer more options when it comes time to renew vendor contracts and, hopefully, saving money over time.

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. For more information, please contact the Employee Benefits Department at Lane Powell Spears Lubersky:

(206) 223-7000 Seattle
 (503) 778-2100 Portland
 employeenefits@lanepowell.com
 www.lanepowell.com

This update is intended to be a source of general information, not an opinion or legal advice on any specific situation, and does not create an attorney-client relationship with our readers. If you would like more information regarding whether we may assist you in any particular matter, please contact one of our lawyers, using care not to provide us any confidential information until we have notified you in writing that there are no conflicts of interest and that we have agreed to represent you on the specific matter that is the subject of your inquiry.