



How are Employers Affected by HIPAA Privacy?

I. Introduction

The HIPAA Privacy Regulations establish new federal privacy standards for the health care industry relative to Protected Health Information (PHI). Essentially, PHI may not be disclosed unless permission from the individual who is the subject of the PHI has been obtained, or the use or disclosure is expressly allowed by HIPAA. Employers that sponsor a Group Health Plan (GHP) for their employees are subject to the HIPAA Privacy rules.

PHI is information that identifies the individual or to which there is a reasonable basis to believe the information can be used to identify the individual, whether oral or recorded in any form or medium, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual.

The Privacy Regulations specify the means by which the flow of information between the employer, as the plan sponsor, and the employer's health plan can occur. The purpose is to ensure that the employer who receives PHI because of its involvement as the plan sponsor does not use that information for non-plan purposes, like making employment decisions.

A GHP is required to comply with all of the standards contained within the Privacy Regulations. The extent to which each plan sponsor/employer receives, uses and/or discloses PHI will determine the actions required to achieve compliance.

One of the first challenges for a plan sponsor/employer is to understand the requirements that permit the flow of information from the GHP (or insurer or Third Party Administrator [TPA]) to the plan sponsor/employer.

II. Permitted Access to Health Information without Employer Action

A GHP is permitted to disclose health information to the plan sponsor/employer under the following circumstances without the employer taking the actions described in section III:

- **Summary Information**

A GHP may disclose summary health information to a plan sponsor/employer if the plan sponsor/employer requests the summary information to obtain premium bids or to modify, amend, or terminate the GHP. Summary health information is information that summarizes claims history, claims expenses or types of claims incurred by individuals under a GHP, as long as the health information does not identify an individual.

- **Enrollment Information**

A GHP may disclose to the plan sponsor/employer information on whether the individual is participating in the GHP or is enrolled in or has disenrolled from the GHP.

- **Protected Health Information (PHI) with Authorization**

A GHP may always provide a plan sponsor/employer PHI pursuant to a written authorization from the individual who is the subject of the PHI or his or her authorized representative.

FOR ALL OTHER DISCLOSURES OF HEALTH INFORMATION, SPECIFIC ACTION IS REQUIRED BY THE PLAN SPONSOR/EMPLOYER; SEE SECTION III.

III. Permitted Access to PHI with Employer Action

It is the employer in its role as plan sponsor who must evaluate and implement the necessary and required actions to achieve its compliance with the standards contained within the HIPAA Privacy Regulations.

A GHP is permitted to disclose PHI to the plan sponsor/employer, other than what is described in section II, only if the plan sponsor/employer takes the following actions:

1. Adopt policies and procedures to use or disclose PHI as permitted or required by the Regulations. These rules apply to all individually identifiable health information used or disclosed by the GHP whether in electronic, written, or oral form. Document and communicate any changes in policies and procedures that may be necessary or appropriate due to changes in the regulations or business practices.
2. Incorporate procedures to ensure only the minimum necessary PHI is used or disclosed to accomplish the intended purpose.
3. Negotiate or revise written contracts to incorporate various privacy-related provisions with individuals or entities (i.e., "business associates") hired to perform a function that includes direct or indirect use or disclosure of PHI.
4. Provide Notice of Privacy Practices with respect to the GHP.
5. Adopt policies and procedures that enable individuals to exercise their rights under the Privacy Regulations. The Privacy Regulations grant specific rights to individuals over their own health information. (Coordination with insurer or TPA is often required.)
6. Amend plan documents to incorporate the specific provisions identified in the Regulations.
7. Certify to the GHP (or the Insurer or TPA) the employer's plan document has been amended as required and the employer is in compliance with these amendments.
8. Designate a Privacy Official who is responsible to develop and implement policies and procedures related to privacy.
9. Train employees on policies and procedures with respect to PHI, particularly those employees who routinely handle PHI in performance of their assigned duties.
10. Ensure appropriate administrative, technical, and physical safeguards are in place to protect the privacy of individually identifiable health information.
11. Provide a process for individuals to make complaints concerning the employer's privacy policies and procedures or compliance thereof. All complaints must be documented, including information related to how complaints were resolved.
12. Adopt a policy to apply appropriate sanctions against employees who fail to comply with privacy policies and procedures or requirements of the Regulations.
13. Refrain from retaliatory acts against individuals and others who may file a complaint or participate in a compliance review or investigation related to the employer's privacy practices.
14. Prohibit the waiver of privacy rights contained within the Regulations as a condition of enrollment in the plan or eligibility for benefits.
15. Maintain documentation of policies and procedures, official communication or record of action taken related to these Regulations by the employer for a period of six years.

THIS INFORMATION IS BEING PROVIDED AS A CONVENIENCE TO EMPLOYERS AS IT RELATES TO THEIR CRL GROUP HEALTH INSURANCE PLAN. THIS INFORMATION IS A SUMMARY ONLY AND THUS NOT COMPLETE, NOR INTENDED FOR THE PURPOSES OF ANY SPECIFIC PLAN SPONSOR/EMPLOYER.

THIS INFORMATION IS NOT INTENDED AS LEGAL ADVICE AND MUST NOT BE CONSIDERED AS SUCH. WE RECOMMEND YOU CONSULT WITH YOUR LEGAL ADVISOR REGARDING YOUR RESPONSIBILITIES UNDER HIPAA OR ANY RELATED STATE LAWS.