IMPORTANT INFORMATION REGARDING THE HIPAA PRIVACY REGULATIONS EFFECTIVE APRIL 1, 2003(*)

The HIPAA Privacy Regulations

The HIPAA Privacy Regulations provide the first comprehensive federal protection for the privacy of health information. It protects medical records and other Protected Health Information (PHI) maintained by Covered Entities. How and when health information may be used and released is limited based on the level of consent given by the patient or as permitted by HIPAA. Covered Entities are expected to provide participants with a clear understanding of their privacy practices as well as receive written authorization from the participants before disclosing protected information.

PHI is defined as any identifiable health information transmitted either electronically or otherwise. Information such as name, date of birth, address, medications, dates of provider service, Social Security number are all considered PHI.

The main objectives of this rule are:

- To give Patients more control over their health information
- To set boundaries on the use and release of health records
- To establish appropriate safeguards that health care providers, health plans and others must achieve to protect the privacy of health information
- To hold violators accountable, with civil and criminal penalties that can be imposed if they violate an individual's privacy rights
- And it strikes a balance when public responsibility supports disclosure of some forms of data, for example to protect public health.

For Participants:

- It provides participants with a method to find out how their information may be used and what disclosures of their information have been made.
- It generally limits release of information to the minimum necessary for the purpose of the disclosure
- It gives participants the right to examine and obtain a copy of their own health records and the ability to request changes.

Who do the Privacy Regulations apply to?

These regulations apply to Healthcare Providers, Hospitals, Health Plans, Health Insurers and Health Care Clearinghouses. These entities are considered *Covered Entities.*

A group health plan is considered a *Covered Entity* as a *Health Plan* unless the plan is self insured AND less than 50 lives. Therefore, if your company is fully insured regardless of size or over 50 lives and self insured, your plan is considered a Health Plan and you must be in compliance by April 14, 2004. (April 1, 2003 for large health plans – those with claims or premiums in excess of $5,000,000.)

A Health Care Clearinghouse is an entity that processes health information from a non-standard format or content into a standard format or content or vice versa AND performs this function for another legal entity

What are the Employer's Responsibilities

Employer's can be broken down to those receiving PHI and those receiving limited or no PHI.

Effect on Fully Insured Group Health Plans where limited or no PHI is Received

If benefits are provided through an insurance policy through an insurance company or HMO and the plan does not receive PHI, then the employer's only responsibility is limited to refraining from retaliatory or intimidating acts if an employee decides to exercise their rights under the Privacy Rule.

These Fully Insured Group Health Plans may continue to receive employee enrollment and termination information as well as summary health information without jeopardizing their status.

Summary Health Information (generally experience Information stripped of 18 identifiers such as name, date of birth, SS# etc…) may be released to the employer as the plan sponsor so that quotes can be obtained by other insurance carriers or HMOs or the information can be used to make changes to the plan. The plan sponsor must agree to use the Summary Health Information for only these reasons. Typically health insurance companies will only release experience information if the plan covers more than 100 to 150 employees.

Insurance Companies and HMO's must provide their fully insured plan participants with a notice that outlines how the company uses and discloses PHI, the employee's privacy rights and the plan's legal duties regarding PHI.

Finally, you must add the HIPAA required privacy amendment to your group health plan document.

Effect on Self Insured Groups or Fully Insured Groups where PHI is Received

When reviewing this, keep in mind that HIPAA distinguishes between an employer and a plan sponsor as defined by ERISA. The only way an employer may obtain PHI is with express authorization from the claimant. The Plan Sponsor may obtain claim information stripped of any individual identifiable information in order to administer the plan. It is therefore critical when receiving PHI that you have your plan sponsor hat on and not your employer hat on.

Self Insured Groups and those larger Fully Insured Groups that receive more explicit information must comply with the Privacy Rule to the fullest extent.

Responsibilities include:

1. Appointing a Privacy Officer to oversee the plan's policies and procedures.
2. Establishing a Privacy Committee or person to handle complaints filed under the Privacy Rule
3. Establishing procedures for filing complaints, as well as refraining from intimidating or retaliatory acts for those who file complaints.
4. Conducting Training for the HR Staff on the Privacy Rules and the uses of PHI. Special care should be taken to make sure that all departments that may have access to PHI are provided with training.
5. Establishing policies and procedures for complying with the Privacy Regulations. This includes protecting PHI from intentional or unintentional misuse as well as developing authorization forms for the dissemination of PHI as well as tracking agreements with "Business Associates" (Business Associates are considered a third party who may have access to PHI for one reason or another. CHB, as your insurance broker has access to PHI and accordingly we will supply all of our clients who fall into this category with an agreement to sign.)
6. Establishing guidelines outlining disciplinary measures for individuals who misuse PHI as well as methods to correct a violation
7. Providing plan participants with a Notice of Privacy Practices outlining the plans uses and disclosures of PHI, the plan participant's privacy rights and the plan's legal obligations regarding PHI. The notice must be posted on any website that you use for the purpose of administering your benefits. In addition the privacy notice must be sent out every three years.

Before an insurer will release PHI to a Plan Sponsor, the Plan Sponsor must certify to the insurer that the Plan Documents have been amended to incorporate provisions regulating the use and disclosure of PHI. The amendment must also describe the procedures the employees may use to inspect their PHI, and correct it if necessary.

Most of the insurance companies that have clients who fit this category have prepared and an agreement and corresponding amendments for their clients.

What Role will Cherry Hill Benefits, Inc. Play?

Eligibility Issues

We will still be able to process your enrollments and terminations.

Claim Issues

Claim information is individually identifiable information that falls under the HIPAA Privacy Rule. Every insurance company has interpreted the HIPAA Privacy regulations differently. Some have developed broker liason lines and as long as we have specific information regarding the claimant, we are able to obtain answers. Others have taken a more conservative approach and require an Authorization to release protected information. Some insurance companies will accept a verbal authorization from the claimant. We have a standard Authorization Form. Consent forms are to be kept for a minimum of six years.

RENEWAL ASSISTANCE

Our renewal procedures will not change.

SUMMARY

We request that every client sign a Business Associate Agreement with us. This protects both CHB and our clients.

We have been HIPAA compliant since April 14, 2003.

How Can Cherry Hill Benefits Assist Our Clients With Compliance

If your Health Plan is fully insured and limited or no PHI is received, there is very little that needs to be done to be compliant.

We request that you sign a business associates agreement between CHB and your company, if you have not already done so. *We recommend that if you are asked by a plan participant for any type of assistance on an issue other than eligibility, that you have the participant sign an Authorization for the release of PHI.* We have a prototype available that allows the participant to release information both to you as the plan administrator as well as Cherry Hill Benefits so that we can lend assistance.

You are not allowed to ask a plan participant to sign a waiver of their HIPAA rights, and you may not retaliate against or intimidate a plan participant who chooses to file a compliant under the Privacy Rule.

Self Insured Groups and those larger Fully Insured Groups that receive more explicit information must comply with the Privacy Rule to the fullest extent.

As with a health plan that receives limited or no PHI, we request that you sign a business associates agreement between CHB and your company, if you have not already done so.

In addition, you must fully comply with HIPAA as a covered entity. This means meeting the seven administrative requirements outlined in the section titled **What are the Employer's Responsibilities**

DISCLAIMER: This information is provided for reference purposes and should not be construed as legal advice. This material does not guarantee that our clients will be in compliance with the Health Insurance Portability and Accountability Act of 1996, as amended.