

HEALTH AND WELFARE UPDATE

HIPAA Privacy

HIPAA privacy is not just about documentation; the operations of the health plan are just as important. HIPAA privacy complaints are being investigated and violations are being referred for prosecution. On August 19, 2004, the first guilty plea was entered in Federal court for wrongful disclosure of individually identifiable health information for economic gain. The individual entering the plea worked at a health care facility and obtained a cancer patient's name, address, date of birth, and social security number. He disclosed the protected information to obtain credit cards and incurred debt in the patient's name. While no actual information about the patient's health or medical condition was allegedly disclosed, the individual was still prosecuted under HIPAA, and the proposed sentence for the HIPAA privacy violation is 10 to 16 months.

HIPAA Security

HIPAA's security standards, that will be effective for electronic protected health information beginning in April, 2005, also involve the operation of health plans. HIPAA's security regulations and the first privacy guilty plea show the need for operational controls, such as background checks on individuals. No certification is required to be HIPAA security compliant, according to the Center for Medicare and Medicaid Services, the portion of the U.S. Department of Health and Human Services in charge of the HIPAA security regulations. Instead, covered entities must review their operations in accordance with the regulations.

We have created a process for group health plans and their plan sponsor's information technology departments to establish cost-effective internal policies and procedures to demonstrate HIPAA security compliance. If you would like to learn more about our process, please contact one of the individuals listed below.

Debit Cards and Employee Welfare Benefit Plans

The use of debit cards with various health and welfare spending accounts has been the subject of guidance by the two federal agencies which have the ability to regulate in this area. The Internal Revenue Service previously issued guidance regarding the use of debit cards with flexible spending accounts, and the Federal Reserve Board previously issued Regulation E governing the use of debit cards and electronic funds transfer with consumer asset accounts. Flexible spending accounts ("FSAs"), health reimbursement accounts ("HRAs"), and health savings accounts ("HSAs") may be covered by Regulation E, depending on how those accounts are structured.

On September 17, 2004, the Federal Reserve System issued a proposed amendment to Regulation E which adds to the definition of a "consumer asset account." Such an account would now include a payroll card account directly or indirectly established by an employer which receives on a recurring basis electronic fund transfers of the employee's wages, salary or other compensation. The proposed amendment would cover any electronic fund transfer that authorizes the debiting or crediting of an employee's account from his or her compensation. Under the proposed amendment, it does



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not matter if the account is operated or managed by the employer, a third party payroll processor or a depository institution.

The proposed amendment to Regulation E would require employers using debit cards with payroll card accounts to issue initial disclosure notices, notices regarding procedures for error resolution, and notices on provisions for authorizing one-time transfers and periodic (monthly) account statements. To the extent FSAs, HRAs or HSAs are subject to Regulation E, the proposed amendment would apply to the use of debit cards used with those accounts to require them to provide monthly statements and other notices, unless an exemption otherwise applies. The proposed amendments included model notices, forms and clauses. Comments were solicited on the proposed amendments, including on the time necessary for implementation of the changes in order to establish the effective date of any final changes to the regulations.

If you have any questions regarding any of these recent developments, please contact one of the undersigned.

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