

HHS Revisits HIPAA Privacy with New FAQ Guidance

Almost three years after the privacy rules first became effective, the Department of Health and Human Services (HHS) has addressed two very common situations in an FAQ posted on its website. Specifically, it addressed disclosures of health information to HR representatives when they assist individuals with claims payment issues under the employer's health plan. It also addressed disclosures of an incapacitated individual's health information to a family member or friend who is assisting with a claims payment issue.

Background

Because of ambiguities in the HIPAA privacy rule, many employers have adopted a policy under which an HR representative must get a formal written authorization from the individual whose claim is at issue before the representative can get involved with the claim. When an employee is asking for help with his or her own health benefits claim, it is easy to have the employee sign the authorization. When the individual asking about the claim is not the individual who incurred the expenses, however, getting an authorization from the correct person can be problematic because the authorization needs to be provided by the individual whose information will be disclosed.

HHS' new FAQ addresses health plans' disclosing information about an individual's health benefits claims to HR representatives and other third parties without an authorization.

Health Plan Disclosures to HR Representatives

According to HHS' new FAQ, a health plan "may disclose relevant PHI to a human resources representative who has called the plan with the beneficiary also on the line."

Many employers have already adopted this "conference call" approach when assisting individuals with claims issues, but it is helpful to have HHS' endorsement. This approach is based on a provision in the privacy rules that allows limited disclosure of an individual's health information to someone involved in payment for the individual's health care if the individual is present and does not object.

The FAQ does not address, however, what effect the HR representative's receipt of health

information through the conference call approach might have on the plan's compliance obligations under the privacy rules.

For example, a fully insured plan has a greatly reduced compliance burden under the privacy rules if the plan and its sponsoring employer receive no protected health information (subject to limited exceptions). When an HR representative receives health information under the conference call approach, does that cause the employer to receive protected health information and eliminate the shortcut compliance strategy? We believe that the answer to this question is "no," but it would be helpful to have HHS confirmation of that answer. It is clear that an employer's receipt of information pursuant to an authorization would not prevent the health plan from using the shortcut compliance strategy.

Health Plan Disclosures to an Individual's Family Member, Friend, or Other Third Party

HHS' new FAQ states that a "health plan may disclose relevant PHI to a beneficiary's daughter who has called to assist her hospitalized, elderly mother in resolving a claims or other payment issue." Health plans routinely make these types of disclosures under a provision in the privacy regulations that allows disclosures to family members, friends, or other individuals identified by the individual as being involved in payment for the individual's health care. In its example of disclosing health information to an individual's daughter, however, the FAQ does not mention the conditions that must be met for the health plan to make those disclosures.

First, in the situation noted in the FAQ, the plan must verify the identity of the caller and whether the caller is a family member, friend, or other individual involved in payment for the individual's health care. Health plans generally do this by asking the caller to provide various information about the individual (e.g., address, telephone number, Social Security number, or date of birth) and the claim (e.g., claim number or date of service).

The health plan then must establish that the caller has authority to receive the information because the plan, in the exercise of professional judgment, believes that the disclosure is in the best interests of the individual.

Finally, the health plan can release only information that is directly relevant to the caller's involvement in the individual's payment for health care and the disclosure must meet the privacy rules' minimum

necessary standards. Health plans generally have detailed rules on the information that they will release to a caller whose identity and authority have been verified (e.g., a caller cannot receive information about any claims other than those for which the caller provides the claim numbers).

Because of the complicated conditions that must be met in order to release information under this standard, most employers have chosen to require their HR representatives to obtain an authorization from the individual whose information is to be disclosed before discussing that individual's health claims with anyone other than that individual.

At the same time, however, most employers purchase health coverage or plan administration services from insurers and TPAs that have policies, procedures, training programs, and systems that allow them to meet the conditions for releasing information to third parties in compliance with the privacy rules. Accordingly, most employers can refer routine inquiries — for which requiring an authorization would seem excessive — to the insurer or TPA that regularly handles claims.

Conclusion

Although it is helpful to see acknowledgement from HHS that these types of disclosures are permissible, the FAQ does not provide employers significant relief from the privacy rules' restrictions on assisting with claims. We continue to believe that employers are best served by referring claims inquiries to the insurer or TPA that handles claims for the plan and requiring a formal authorization from the individual whose information is at issue before becoming involved in inquiries about a claim.

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