

Reminder: It's Time to Distribute a Notice Advising that the HIPAA Privacy Notice Is Available

A notice deadline is approaching for certain health plans that provide self-insured benefits. This *Alert* explains which plans must send the notice and provides a sample notice that plans can adapt and, with advice of legal counsel, use to satisfy this notice obligation.

Background

Privacy rules under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") require plans to provide notice of their privacy practices, and small health plans (those having less than \$5 million in premiums or premium equivalents during 2002) were required to send an initial notice of privacy practices by April 14, 2004. Those small plans now have an additional notice obligation under the privacy rules: They must notify individuals who are covered by the plan that the plan's privacy notice is available and explain how to obtain a copy. For small plans, the deadline for this availability notice is April 14, 2007. (It's also required every three years thereafter.)

We say that this requirement applies to self-insured plans because, if a plan is fully insured, it is not required to distribute a notice of privacy practices or an availability notice. The insurer is required to do so. (The plan is required, however, to maintain a notice of privacy practices and provide it upon request if the employer sponsoring a fully insured plan receives protected health information (PHI) other than enrollment information and certain other limited items.)

Means of Delivery

The privacy rules do not require any particular distribution method, or means of delivery. It seems reasonable, however, to deliver the notice in the same manner that an ERISA plan

delivers a summary plan description. (Generally, that means delivering the notice to individuals at their workstation or mailing it to their homes.) There is one respect in which the rules for providing SPDs cannot be applied to privacy notices. The privacy rules specify that electronic means of delivery are permissible *only if* the recipient has agreed in advance to receive the notice electronically and the plan provides a paper copy of the notice if it learns that the electronic delivery has failed. Therefore, most employers simply choose to use the mail for notices of privacy practices.

Recipients

The privacy rules make clear that plans are not required to distribute the notice to each individual enrolled in the plan. They allow distribution to the "named insured." Therefore, a health plan can distribute its notice to employees, retirees, individuals receiving coverage pursuant to qualified medical child support orders, and COBRA qualified beneficiaries, without delivering it separately to spouses or dependent children.

Content

A copy of a sample notice is set out below. While there is no mandated form for the notice, employers should consult with their legal counsel before using the sample. If a plan prefers to do so, it can redistribute its full notice of privacy practices.

SAMPLE NOTICE OF AVAILABILITY OF NOTICE OF PRIVACY PRACTICES

Notice of Availability
[Name of Plan] Notice of Privacy Practices

THIS NOTICE DESCRIBES HOW YOU MAY OBTAIN A COPY OF THE PLAN'S NOTICE OF PRIVACY PRACTICES, WHICH DESCRIBES THE WAYS THAT THE PLAN USES AND DISCLOSES YOUR PROTECTED HEALTH INFORMATION.

[Name of Plan] (the "Plan") provides health benefits to eligible employees of **[Name of Employer]** (the "Company") and their eligible dependents as described in the summary plan description(s) for the Plan. The Plan creates, receives, uses, maintains and discloses health information about participating employees and dependents in the course of providing these health benefits. The Plan is required by law to provide notice to participants of the Plan's duties and privacy practices with respect to covered individuals' protected health information,

and has done so by providing to Plan participants a Notice of Privacy Practices, which describes the ways that the Plan uses and discloses PHI. To receive a copy of the Plan's Notice of Privacy Practices you should contact **[Name or Title of Contact Person]**, who has been designated as the Plan's contact person for all issues regarding the Plan's privacy practices and covered individuals' privacy rights. You can reach this contact person at: **[Address and Telephone/ Fax Number]**.

U.S. Benefit Office Locations

Atlanta, GA
(404) 224-5000

Boston, MA
(617) 437-6900

Cleveland, OH
(216) 861-9100

Detroit, MI
(248) 735-7580

Ft. Worth, TX
(817) 335-2115

Jacksonville, FL
(904) 355-4600

Los Angeles, CA
(213) 607-6300

Miami, FL
(305) 373-8460

Mountain View, CA
(650) 944-7000

New York, NY
(212) 344-8888

Philadelphia, PA
(610) 964-8700

Roswell, NM
(505) 317-3397

San Juan, PR
(787) 756-5880

Wilmington, DE
(302) 477-9640

Austin, TX
(800) 861-9851

Cary, NC
(919) 459-3000

Columbus, OH
(614) 766-8900

Eugene, OR
(541) 687-2222

Grand Rapids, MI
(616) 954-7829

Knoxville, TN
(865) 588-8101

Louisville, KY
(502) 499-1891

Milwaukee, WI
(414) 271-9800

Naples, FL
(239) 514-2542

Omaha, NE
(402) 778-4851

Phoenix, AZ
(602) 787-6000

St. Louis, MO
(314) 721-8400

Seattle, WA
(206) 386-7400

Baltimore, MD
(410) 527-1200

Charlotte, NC
(704) 376-9161

Dallas, TX
(972) 385-9800

Farmington, CT
(860) 284-6137

Greenville, SC
(864) 232-9999

Las Vegas, NV
(702) 562-4335

Malvern, PA
(610) 889-9100

Minneapolis, MN
(763) 302-7100

Nashville, TN
(615) 872-3700

Orange County, CA
(949) 885-1200

Pittsburgh, PA
(412) 586-1400

San Diego, CA
(858) 678-2000

Tampa, FL
(813) 281-2095

Birmingham, AL
(205) 871-3871

Chicago, IL
(312) 621-4700

Denver, CO
(303) 218-4020

Florham Park, NJ
(973) 410-1022

Houston, TX
(713) 625-1023

Long Island, NY
(516) 941-0260

Memphis, TN
(901) 248-3100

Mobile, AL
(251) 433-0441

New Orleans, LA
(504) 581-6151

Orlando, FL
(407) 805-3005

Portland, OR
(503) 224-4155

San Francisco, CA
(415) 981-0600

Washington, DC
(301) 530-5050

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