



TOPIC:

ADMINISTRATION ISSUES NEW HIPAA PRIVACY GUIDANCE

**EXECUTIVE
SUMMARY:**

ON MARCH 27, 2002, THE DEPARTMENT OF HEALTH AND HUMAN SERVICES FINALLY ISSUED ITS NEW PROPOSED GUIDANCE ON THE HIPAA PRIVACY RULES IN THE FORM OF A NOTICE OF PROPOSED RULEMAKING (“NPRM”). ALTHOUGH THE COMPLIANCE DATE OF APRIL 14, 2003 (2004 FOR SMALL HEALTH PLANS) REMAINS UNCHANGED, THE NPRM DOES PROPOSE SEVERAL CHANGES THAT WILL BE HELPFUL TO MULTIEmployer HEALTH AND WELFARE FUNDS AND OTHER ERISA PLANS. THIS ISSUE OF MULTI-ELERT REVIEWS THOSE CHANGES AND REQUESTS YOUR INPUT ON PROPOSED COMMENTS THAT INCLUDE CREATING A NEW CATEGORY OF PHI FOR BENEFIT APPEALS PURPOSES.

PURPOSE:

TO SOLICIT INPUT FROM HEALTH BENEFIT PLANS REGARDING NEW PROPOSED GUIDANCE ON CHANGES TO THE HIPAA PRIVACY RULES

CATEGORY:

PROPOSED RULES

ISSUER:

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

**TARGET
AUDIENCE:**

HEALTH AND WELFARE FUND ADMINISTRATORS, COUNSEL AND TRUSTEES

INPUT REQUESTED:

COMMENTS REGARDING PROPOSED NEW MODEL BUSINESS ASSOCIATE AGREEMENTS; CREATION OF A MODEL AUTHORIZATION FOR M; AND CREATION OF A NEW CATEGORY OF PHI REGARDING BENEFIT APPEALS INFORMATION

**OFFICIAL COMMENT
PERIOD ENDS:**

CLOSE OF BUSINESS APRIL 26, 2002

NCCMP DEADLINE:

CLOSE OF BUSINESS APRIL 17, 2002

**FORWARD
COMMENTS TO:**

Multi-elert@nccmp.org

REFERENCE:

VOL. 2, ISSUE 4,

**FOR ADDITIONAL
BACKGROUND SEE:**

- March 27, 2002 edition of the Federal Register, beginning at page 14776. 67 Fed. Reg. 14776 (March 27, 2002)
- A fact sheet and press release can also be accessed through www.hhs.gov/ocr/hipaa/whatsnew.html
- A fact sheet on the final regulation prepared by HHS can be found at www.hhs.gov/news/press/2000pres/00fsprivacy.html

Administration Issues New HIPAA Privacy Guidance

For many months the Bush Administration has been working on proposed changes to the Final Rule on medical privacy that was issued on December 28, 2002 in the waning days of the Clinton Administration.

On March 27, 2002, the Department of Health and Human Services finally issued this new proposed guidance on the HIPAA privacy rules in the form of a Notice of Proposed Rulemaking (“NPRM”).¹ Although the compliance date of April 14, 2003 (2004 for small health plans) remains unchanged, the NPRM does propose several changes that will be helpful to multiemployer health and welfare funds and other ERISA plans.

Among the most helpful are the Department’s issuance of a model business associate contract and its recognition of the difficulty in negotiating all business associate contracts before the compliance date.

The most significant change for multiemployer health and welfare funds is the new proposed transition rule regarding business associates (i.e., those entities who perform services for the group health plan, such as TPAs, consultants, lawyers, etc.). If the proposed changes are adopted, covered entities may have additional time to continue to operate under existing contracts with business associates for up to one year beyond the original compliance date. As you may recall, the Final Rule required covered entities to have signed business associate contracts that meet the requirements of the privacy rule in place by the compliance date before covered entities, such as multiemployer health and welfare funds, could share protected health information (PHI) with those business associates.

Under the proposed transition rule, if a covered entity has an existing written contract or other written arrangement with a business associate on the effective date of the transition rule (proposed as October 13, 2002) and that contract or arrangement is not renewed or modified before the compliance date of the Final Rule (April 14, 2003), the covered entity would have extra time (possibly up to a year) to negotiate a new contract. Under the transition rule, covered entities would have to comply with the business associate contract rules on the date on which the contract or arrangement is renewed or modified or on April 14, 2003, if earlier.

NCCMP Asks for Your Comments

Comments on the proposed changes are due to the Department by close of business on April 26, 2002. Although this is an extremely short comment period, the NCCMP intends to file comments. But we need your help.

Our initial reaction to the proposed changes is mostly positive. However, there are still many issues that are of concern to multiemployer plans. We need your help in trying to identify areas in which we can ask the Department to issue further clarification or make changes.

¹ This guidance can be found in the March 27, 2002 edition of the Federal Register, beginning at page 14776. 67 Fed. Reg. 14776 (March 27, 2002). It can also be accessed electronically through the U.S. Department of Health and Human Services at www.hhs.gov/ocr/hipaa/whatsnew.html. A fact sheet and press release can also be accessed through this site. A fact sheet on the final regulation prepared by HHS can be found at www.hhs.gov/news/press/2000pres/00fsprivacy.html. The regulation itself is available electronically at <http://aspe.hhs.gov/admsimp> and at the Government Printing Office’s website at http://www.access.gpo.gov/su_docs/aces140.html.

Two areas we intend to address in our comments are the usefulness of a model authorization form and potential additional relief for use of PHI in benefit appeals.

We appreciate the Department's assistance in providing model business associate contract language and we intend to suggest that it would be extremely helpful if the Department would issue a model authorization form. In the NPRM, the Department took several steps to streamline the authorization process, so providing a model authorization form would be consistent with that approach.

In addition, we intend to urge the Secretary to create a special new category of health information based on the type of information trustees need to decide benefit appeals. For many multiemployer plans, this may be the only function that trustees perform in which they need access to protected health information (PHI). We plan to suggest that if the covered entity (the group health plan) only shares "benefit appeals information" with the trustees that the plan would not have to be amended to incorporate the special group health plan rules.

Under the Final Rule, the plan would have to be amended in order to give trustees or other plan sponsors access to PHI to decide appeals. We would be suggesting that a subset of that information is all that trustees need and asking that the Department create a special category of information that the trustees could use to carry out appeals responsibilities without having full exposure for use and disclosure of PHI. "Benefit appeals information" could be defined as PHI without certain personal identifiers (such as the patient's name, address, telephone number, fax and e-mail, social security number, date of birth (although age in years and months could be used if relevant), local union number (unless relevant because of the benefit structure), retiree/active status (unless relevant because of benefit structure). In our comments, we would ask the Department to clarify that if the only information that is disclosed to trustees is "benefit appeals information," the plan would not have to adopt the group health rules.

If you have any other suggested changes or clarifications that you would like to see included in the NCCMP comments, please forward them to the NCCMP to the attention of Randy G. DeFrehn, Executive Director, as soon as possible but not later than April 17, 2002.

Plan trustees and plan sponsors should rely on their own attorneys and other professional advisors for advice on the meaning and application of any Federal regulations.

If you have questions about the NCCMP, or about this or other issues of Multi-Elert, please contact Randy G. DeFrehn, Executive Director, NCCMP, by phone at (202) 737-5315, or by e-mail at rdefrehn@nccmp.org.
