



ABC's HIPAA NEWS!

Spring, 2005

HIPAA PORTABILITY & CERTIFICATION FINAL RULES, HIPAA SECURITY PLAN REMINDER AND ANOTHER PRIVACY CONVICTION! *THREE IMPORTANT TOPICS COVERED IN ONE HIPAA NEWS ISSUE!*

HIPAA Portability and Certification Final Rules and Notice of Proposed Rulemaking Released December, 2004; Final Rules Effective For Plan Years On or After July 1, 2005

Just when we thought HIPAA's portability and certification requirements were in the past and employers could focus on HIPAA's newer privacy requirements, new Portability and Certification Rules (final rules) were released!

The Final Regulations for Health Coverage Portability; Final Rule, and Notice of Proposed Rulemaking for Health Coverage Portability and Request for Information on Benefit-Specific Waiting Periods Under HIPAA Titles I and IV; Proposed Rules were released on December 30, 2004. The Final Rules are effective for plan years on or after July 1, 2005.

The purpose of the final regulations and proposed rules is to clarify and revise the previous (existing) portability rules and regulations issued in 1997 and thereafter. The Final Regulations and Proposed Rules were issued jointly by the DOL, IRS and HHS. The final rules apply to all private employers and government employers.

The new regulations revise and clarify pre-existing conditions exclusion rules, creditable coverage rules, special enrollment and excepted benefits. In addition, the new regulations requested comments on interaction of FMLA leave with HIPAA Portability rules, and "tolling" of time periods. The new rules, however, do not address non-discrimination rules, disease management, or credits for participating in wellness programs. The additional regulations on these topics will likely be released later this year.

The final regulations produced a new definition of pre-existing conditions to deal with perceived abuses in the prior pre-ex exclusion provisions. Several examples of "hidden" pre-existing clauses used by health issuers were provided in the regulations. In addition, the enrollment date was clarified.

Important clarifications of the application of pre-existing conditions exclusion/limitations rules to newborns and adopted children were provided.

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The final regulations modified the pre-existing conditions notice and created a new General Notice requirement. This new notice must be provided as part of any written application materials provided by the employer as part of the enrollment process.

The Creditable Coverage rules have also been modified, particularly related to the determination within a reasonable time and limits on presenting evidence of creditable coverage. In response to the Trade Act, clarifications regarding the breaks in service rules were also included in the final regulations. These changes are reflected in new requirements for Certificates of Creditable Coverage, including the form and content of the certificates. Well-defined, written procedures are now required for creditable coverage.

Clarifications were also noted in the definitions for and applications of special enrollment rights. The final regulations have specified what the loss of coverage means, how special enrollments are triggered and how this applies to open enrollment plan changes. There are now new requirements for the Special Enrollment Rights Notice.

Clarifications have occurred in the excepted benefits provisions, particularly regarding limited scope dental and vision benefits. FSA benefits have been clarified, related to the maximum payable to any individual in the class, and clarifications regarding hospital indemnity and supplemental benefits have been made.

A number of action items have resulted for employers sponsoring health plans from the final regulations. A complete review of your administrative procedures is suggested.

The details of these changes are too vast for this publication. Advanced Benefit Consulting has covered these final rules, including an employer summary of how it effects your day-to-day human resources functions and activities, along with new sample forms, notices and other requirements, in our Spring, 2005 Update for HIPAA Manual Purchasers. This update is offered to our Manual Purchasers at a fee of \$125 per year. Discounts apply to customers purchasing the update within 30 days of its release. The expected release date of the update is June 15, 2005. Update subscriptions are available after June 1, 2005. You must be an ABC's of HIPAA Compliance; An Employer's Simplified Guide to HIPAA Compliance purchaser to subscribe to the 2005 update service. Details may be found on our website, or by calling our HIPAA Manual Department at (866) 658-3835, extension 4#. All update subscriptions include a CD rom with all of the forms, notices and other materials in word documents for simple application.

HIPAA Security Rules Effective Date April, 2005

Although this topic was covered in prior HIPAA updates and a Sample Security Plan was provided in our HIPAA Manual Update Service, we wanted to give you a final reminder that employers need their security plans in place by April, 2005. Included components of your security plan are physical, administrative and technical security.

If you are self-insured, be sure to check with your claims administrator to see if your existing Business Associates Agreements are adequate, or if they need to be amended to include Security provisions.

A few simple things you can do to within the HR office to assist you with security. If you don't have a screen saver and login with password set up on the computers of all privacy work group members, you can use the free, built-in features of Microsoft on Windows XP products. It is best to have your screen saver set up with no more than a 5 or 10 minute automatic feature. If you have to leave your desk, set this up to go to automatic screen saver mode, and require a password to log back in.



First, set your Windows XP computers to a log-in mode each day. Click on control panel, then user accounts, then create a password. Next, to set up a screen saver with automatic log-off mode and sleep mode, click on control panel, then click on display, then set the time for whatever you desire (5 or 10 minutes would be best), and check on resume. It's free with your Windows XP software, and it is a simple process that will keep your data secure and stop passersby from seeing your screen when you walk away from your desk.

However, there are many items that you should accomplish, so update your security plan (see Winter Update, 2003, Privacy Update #1 of our HIPAA manual if you are an update subscriber) and make sure all items are addressed. If they do not apply to you, be sure to insert "N/A" on the chart.

Another Privacy Conviction! ***Bell vs. Michigan Council 25***

In a state privacy suit, the case of Bell vs. Michigan Council 25, as published in the State of Michigan Court of Appeals, February 15, 2005, Case Number 246684, Wayne Circuit Court, resulted in an employer found negligent and the plaintiffs being awarded \$275,000 under Michigan state law. Although this case was filed before HIPAA privacy was effective nationwide, it shows a continuing effort to punish violators in privacy areas.

In this case, employees of the City of Detroit emergency service operators, which dispatch 911 calls, filed suit against their Union, AFSCME (AFL-CIO), Local 1023, for not safeguarding their personnel information. This failure resulted in identity theft, and the Union was found negligent; plaintiffs were awarded a collective sum of \$275,000.

There were 13 plaintiffs in the case. In late 1999 these plaintiffs became victims of identity theft. All were employees of the City of Detroit and worked as emergency service (911) operators. In March, 2001, plaintiffs filed suit against the Union. Plaintiffs, according to the Court of Appeals case, asserted that the Union was liable for not safeguarding their personnel information and that this negligence facilitated the identity theft of a third party.

Following a jury trial, the Union was found to have been negligent and plaintiffs were awarded a collective sum of \$275,000. The Union appealed this decision. The Court of Appeals found that the Union did owe plaintiffs a duty and the question of negligence was properly submitted to the jury, and affirmed the jury's decision and award in favor of the plaintiffs.

Membership in the Union was mandatory. Dues were automatically deducted from plaintiff's paychecks and personal identification information necessary for their union membership was collected by the City. The City of Detroit provided the Union with a quarterly report of all personnel who were members of the Union. The Union's Treasurer, Yvonne Berry, compared the City's report to a similar report generated by the Union to ensure accuracy and correct any discrepancies. The City's report contained each employee's job classification, social security number and pension number.

Berry's daughter, Dentra Berry, was arrested in February, 2000 for her participation in the appropriation of the 911 operator's identity. A notebook was found in her bedroom which contained the names of 911 operators, their social security numbers, driver's license numbers, and illegal phone services and goods purchased in the operators' names. Following the jury's verdict, the defendant filed a motion for a re-trial, which was denied, and this last appeal followed.

Additional details of the court case can be found on our website, under HIPAA News. Again, it is important to stress that this is a state court issue, and occurred prior to the effective date of HIPAA privacy laws. It is important, however, because it shows a continued effort to punish violators. It is also important



because HIPAA allows state laws to supercede HIPAA's federal requirements under certain circumstances. Many states have privacy laws which exceed HIPAA privacy federal floors created under the Health Insurance Portability and Accountability Act. This case is important to employers because it was the situation which resulted in identity theft began because of an employer's union's failure to properly protect employment records.

Reference Sources: *Federal Register*, Thursday, December 30, 2004, Part III, Department of the Treasury, Internal Revenue Service 26 Parts 54 and 602, Department of Labor, Employee Benefits Security Administration, 29 Part 2590, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 45 CFR Parts 144 and 146. *Final Regulations for Health Coverage Portability; Final Rule, and Notice of Proposed Rulemaking for Health Coverage Portability and Request for Information on Benefit-Specific Waiting Periods Under HIPAA Titles I & IV; Proposed Rules.*

State of Michigan Court of Appeals, Bell vs. Michigan Council 25 of the American Federation of State, County, and Municipal Employees, AFL-CIO, Local 1023, Unpublished February 15, 2005, Case No. 246684, Wayne Circuit Court, LC No. 01-107819-NO



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