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STARTING JUNE 1, EMPLOYERS MUST GIVE NOTICE ON GROUP HEALTH PLANS (COBRA)

By: Matt W. Zeigler, Esq.

June 1 begins requirement of notice to employees on group health plans.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), was adopted on August 21, 1996. HIPAA was enacted to reduce the gaps of health insurance coverage for employees moving between jobs and to eliminate exclusions of individuals from coverage based on preexisting conditions or health status.

Employers must start issuing certificates of coverage on June 1, 1997. This article will deal with sample certificates and model notices that must be provided to employees. This article will also address who must deliver the notices and who is entitled to receive that information.

Penalties are enforceable against employers and providers when group health plans, other than governmental and small employer plans, (a small employer is one who employs less than 50 employees on a controlled group basis based on a daily average from the prior year) fail to comply with these notice and certificate violations until corrected. The maximum penalty is the lesser of 10 percent of the employer's plan cost, or $500,000.

HIPAA imposes its requirement through changes in ERISA, the Internal Revenue Code, the Public Service Act and the Social Security Act. Interim regulations were issued on April 8, 1997, which include model notices and certificates that employers are required to use beginning June 1, 1997.

HIPAA is designed to work in conjunction with OBRA to facilitate a complete health insurance portability system that allows employees to change jobs without the fear of losing coverage. These rules will also improve coverage access for individuals with health conditions that until now prevented them from getting coverage before.

What Size Group Health Plans Are Affected?

These new rules apply to all group health plans that have more than one (1) participant who was a current employee on the first day of the plan year.

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What Plans Are Affected?

A group health plan means an employee welfare benefit plan that provides medical care to employees or dependents directly or indirectly through insurance, reimbursement or otherwise.

Medical care means amounts paid for the diagnosis, cure, mitigation, treatment, or prevention of disease; amounts paid for the purpose of affecting any structure or function of the body; amounts paid for transportation primarily for and essential to medical care, and amounts paid for insurance covering medical care.

What Plans Are Not Affected?

- Government plans; plans covering fewer than two current employees at the beginning of the plan year.
- Accident insurance, disability insurance income; liability insurance and supplements (including workers' compensation), automobile medical payment insurance, credit-only insurance, coverage for on-site medical clinics, or other coverage specified in future regulations in which medical care is secondary or incidental to other insurance benefits;
- Limited dental or vision benefits, long-term care insurance, nursing home insurance, home health care insurance, or coverage for community based care, if these benefits are provided under a separate policy, certificate, or contract of insurance, or are otherwise not an integral part of the plan;
- Coverage for a specified disease or illness, or hospital indemnity or other fixed indemnity insurance if the following apply:
    - Benefits are provided under a separate policy, certificate, or contract of insurance;
    - No coordination exists between the provisions of such benefits and any exclusion under the plan, and;
    - Benefits are paid for an event regardless of whether benefits are provided under any group health plan maintained by the same plan sponsor.
    - Medicare supplemental coverage or other similar supplemental coverage, if provided under a separate policy, certificate, or contract of insurance.

Certification of Coverage – Employer Requirement.

An employee's prior plan must supply a certification of coverage at the time coverage ceases or, upon request of the individual, at any time within the next two years. The certification must specify the period of credible coverage.

Certificates are required by June 1, 1997, however, employers need not report events prior to October 1, 1996, and, upon request by an employee, not back any earlier than July 1, 1996. Individual employees will bear the burden of showing coverage prior to July 1, 1996 (if needed) under special procedures to be established by the IRS.

These notices must be given when:

- Any individual ceases to be covered, which includes dates when he or she is eligible for COBRA.
- On the COBRA coverage termination date for an individual.
- For formerly covered individuals, upon request if the request was made within 24 months of the termination of the coverage-which can be the end of the COBRA coverage period.
- The effective date for the HIPAA notice is the date the coverage is lost; effective date for COBRA coverage is the date of an event causing the loss of the coverage. (Note that the timing does coincide.)

An employer with a group plan should review the model sample certificates and begin implementing them with newly hired employees, as well as terminating employees. In addition, a review of the group insurance plan is necessary to ensure that there are no illegal exclusions of health benefits to newly hired employees based on preexisting conditions. Finally, summary plan descriptions need to be reviewed to include the ERISA required disclosures. More information next month.