

Special
points of interest:

- **Member ID # and Explanation of Benefits (EOBs)**
- **HIPAA Privacy Question- Law Enforcement Agency Request**

Member ID # and Explanation of Benefits (EOBs)

In our April 2003 Newsletter we discussed the issuance of new BAS Health Identification Cards to all Plan Participants. The new ID Cards replaced the employee's Social Security Number with a unique Member ID Number that is randomly assigned by our computer system.

The issuance of the new ID Cards was the first step in an initiative which is intended to remove employee's Social Security Numbers from all Employee Health Benefit related forms and correspondence.

Our decision to initiate this project was motivated by three fundamental issues:

1. A law enacted in the state of California;
2. HIPAA Privacy and Security; and
3. Client and Plan Participant concern over identity theft.

Within the next two months we will move forward with this project and remove the employee's Social Security Number from Explanation of Benefits (EOBs) and correspondence.

Since June 16, 2003, when we removed the employee's Social Security Number from the Health ID Cards, we have been tracking claims submitted by health care providers. As of this date, more than 50% of claims received have been submitted with the Member ID Number rather than the Social Security Number. The provider community is now familiar with the Member ID Number concept and we have not experienced any claims administration problems since the removal of the Social Security Numbers. We believe that using the Member ID Number on EOBs and correspondence will further protect the privacy and identity of all Plan Participants.

HIPAA Question – Law Enforcement Agency Request

QUESTION: A company sponsors a self-funded group health plan that is subject to the HIPAA privacy rules. A law enforcement agency requested the Plan's records relating to a Participant's prescription drug usage. The agency does not have a subpoena, warrant, or authorization signed by the Participant. Will the company violate the HIPAA privacy rules if they comply with the request?

ANSWER: Maybe. The requested records constitute protected health information (PHI) and any disclosure must comply with the privacy rules. The rules include several

provisions permitting disclosures for law enforcement purposes, and HHS recently published an FAQ summarizing those provisions (available at <http://answers.hhs.gov> ("May covered entities disclose protected health information to law enforcement officials?"). Each provision that permits disclosure of PHI for law enforcement purposes is limited to particular circumstances.

The provisions that will be of most interest to group health plans include those permitting disclosures required by law or pursuant to court orders, court-ordered

warrants, summonses or subpoenas issued by a judicial officer, and grand jury subpoenas. Disclosures are also permitted pursuant to administrative subpoenas and other investigative demands, but they are subject to different rules: for such requests, the information must be material and relevant to the law enforcement inquiry, the request must be specific and limited, and de-identified information could not reasonably be used for the purpose.

There are also several provisions regarding disclosure of the PHI of a victim of a crime, abuse, neglect, or domestic violence; each of those provisions is subject to specific conditions (and the provisions relating to child abuse or neglect differ from those relating to abuse or neglect of adults).

Moreover, the privacy rules permit disclosure of limited types of information in response to a law enforcement official's request for the purpose of identifying or locating a suspect, missing person, fugitive, or material witness, and the same limited types of information may be disclosed about a suspected perpetrator of a crime if the disclosure is made by the crime victim and the victim is a member of the covered entity's workforce.

In addition, PHI may be disclosed if the covered entity believes, in good faith, that the PHI is evidence of a crime that occurred on the covered entity's premises. A covered entity may also disclose PHI, consistent with law and ethical standards, if the covered entity believes in good faith that the disclosure is necessary (1) to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and the disclosure is made to a person (such as a law enforcement official) who is reasonably able to prevent or lessen the threat, or (2) under limited circumstances, to identify or apprehend an individual. Finally, PHI may be disclosed to a correctional institution or law enforcement official having lawful custody of an individual if the PHI is needed to provide health care to the individual or for certain other purposes.

Disclosures to health oversight agencies are permitted, under certain circumstances, for activities including criminal investigations and proceedings. However, the provisions permitting such disclosures specifically carve out many investigations in which an individual is the subject of the investigation; in those cases, the health oversight agency must obtain information under other provisions of the HIPAA privacy rules.

So, the answer to the question depends on why the law enforcement agency wants the PHI. Even if you determine that the disclosure is permitted (and you may want to involve counsel in making that decision), you must still bear in mind that disclosures for law enforcement purposes are usually limited to the minimum necessary, although sometimes a covered entity is allowed to rely on a public official's representations that what is requested is the minimum necessary.

And finally, disclosures to law enforcement officials are subject to the requirement that the identity and authority of any person requesting PHI be verified before making a disclosure unless the person is known to the covered entity.

For more information, visit www.benadmsys.com or privacyassistance@benadmsys.com