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HIPAA Notice of Privacy Practices: Fast-Approaching Deadline

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The HIPAA Privacy Rule previously required certain health plans to provide participants a Notice of Privacy Practices ("Privacy Notice") no later than April 14, 2003. Those same health plans must also satisfy another fast-approaching notice deadline. No later than April 14, 2006, they must provide to participants a reminder that the Privacy Notice is available and the manner in which a participant or dependent may obtain a copy of the Privacy Notice. This newsletter will help you identify whether your company's health plans are subject to this upcoming deadline and, if so, the steps you must take to meet the deadline.

Who is subject to the upcoming deadline?

The upcoming deadline essentially applies to any "health plan" that was previously required to comply with the HIPAA Privacy Rule no later than April 14, 2003. This included any health plan with more than \$5 million in annual premiums or claims. The corresponding upcoming deadline for small plans (those with \$5 million or less in annual premiums and claims) is not until April 14, 2007. As you may recall, excluded from the definition of "health plan" is a plan with fewer than 50 participants that is self-administered by the employer that established and maintains the plan.

What must be provided by the deadline?

Participants must receive a reminder of two things: (i) the Privacy Notice is available, and (ii) the manner in which a participant or covered dependent may obtain a copy of the Privacy Notice. As you might assume, this reminder can be quite short, so long as it satisfies the previous sentence.

Who must receive the reminder?

Your company's health plan will comply with HIPAA if a proper reminder is provided to only the insured employee, even if coverage is also provided to one or more dependents. For example, if one of your company's employees and her three dependents are covered under your health plan, your health plan will satisfy the reminder requirement by sending the reminder to only the employee.

*"If your company's health plan has not provided a reminder of the availability of its Privacy Notice in the last three years, it has **less than a month** to do so."*

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The information in this newsletter is of a general nature only and does not constitute legal advice.

Consult your attorney for advice appropriate to your circumstances.

How may the reminder be provided?

The Department of Health and Human Services ("HHS") recently instructed that the reminder may be provided in a number of ways, including:

- mailing a reminder concerning the availability of the Privacy Notice and information on how to obtain a copy;
- sending a new copy of the Privacy Notice; or
- including in a plan-produced newsletter or other publication information about the availability of the Privacy Notice and how to obtain a copy.

This recent HHS guidance did not, however, provide assistance related to the electronic distribution of the reminder. As a result, please remember the HIPAA Privacy Rule's strict requirements for electronic notices. For instance, electronic notice may not be provided to a participant unless he or she has consented to electronic notice.

When is the upcoming deadline?

The Privacy Notice reminder must be provided no less frequently than once every three years. Thus, those health plans that have not already reminded participants in some manner of the availability of their Privacy Notice must do so no later than April 14, 2006. Keep in mind that your health plan may have already met this deadline if, in the last three years, it has provided the reminder through one of the methods described above. This might have happened if your health plan has adopted the practice of annually sending the Privacy Notice to all participants or including information regarding the availability of the Privacy Notice in annual communications sent to participants. It also may have occurred if your health plan has substantially amended its Privacy Notice and, thus, sent the revised Policy to participants. Of course, if any of these were communicated electronically, you should ensure that the communication satisfied the Privacy Rule's specific electronic notice requirements.

Additional Steps

If your company's health plan has not provided a reminder of the availability of its Privacy Notice in the last three years, it has **less than a month** to do so. If you have any questions about whether your plan is subject to this fast-approaching deadline or whether it has already complied with the deadline, or if you would like our assistance with the preparation of the Privacy Notice reminder, please do not hesitate to contact us.