

Don't Just Amend the Plan Document

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As the deadline for HIPAA Privacy compliance approaches for most employers, I have become aware of a problem with the way that many TPAs, claims administrators and flex plan administrators have attempted to assist their clients. The problem I will describe in this column presents an opportunity for administrators, brokers and agents to provide a valuable service to employer clients.

The Plan Document Amendment

One of the HIPAA privacy requirements for all self-funded (including Section 125 medical flex accounts), and some fully-insured health plans, is that the plan document must be amended to include specific privacy provisions. Many administrators of self-funded plans and Section 125 flex plans provide plan documents as part of their services to clients. In an effort to comply with the HIPAA plan document requirement, administrators often provided HIPAA plan document amendments to employers.

The Problem

A typical plan document requires an employer to take certain actions, but most employers are not aware of the steps they need to take. The result is that by amending the plan documents, but not providing any assistance with the client's compliance responsibilities, the administrator has actually put the employer in a worse position. Now their plan document says that the employer has done things that they have actually not addressed!

For example, most plan document amendments will contain clauses similar to the following:

- *"...the Plan Sponsor (the employer), will not use or disclose the information for employment-related actions or decisions...unless the disclosure is subject to a valid authorization as defined by the HIPAA Privacy Standards"* I doubt most employers know of this restriction, or what elements make up a "valid" authorization.
- *"...access to PHI will be limited to certain classes of persons (defined in the plan document). Any person who uses PHI in a manner not in compliance with the requirements of this plan document will be subject to sanctions defined by the plan sponsor..."* Have most employers actually identified the employees eligible to receive PHI, and have they developed a sanction policy that applies to those employees?

Amending an employer's plan document without helping them understand their responsibilities is like buying a car for a 16 year old and telling them to go out and drive without any drivers training or practice...not a good idea!

What Should a TPA or Broker do?

First of all, make sure your clients understand that just because their plan document has been amended and the TPA has signed a Business Associate Agreement does not mean the employer is done. In fact it really means they have more work to do...

Obviously, most TPAs and brokers are not in the position to act as the employer's HIPAA consultant. It is reasonable, however, for an employer to expect to be informed of their responsibilities and given tools and solutions to help them comply.

A number of forward thinking TPAs have provided HIPAA compliance assistance or guides to their clients...either something they have developed themselves, or guides like the KnowHIPAA.com HIPAA guide for Section 125 Flex Plans.

Brokers should know what has been provided to their clients by administrator they work with. If all the administrator has done is offered a plan document amendment, brokers should push the TPA to do more, or offer a solution to the employer themselves. Brokers and agents are finding that there are a number of good HIPAA tools and solutions available that they can provide to clients for a relatively low cost.

The interest level of employers is increasing as the deadline for compliance approaches. It seems to me that everyone waited until after the holidays to pay attention to HIPAA. Since January 1st, my phone has been ringing off the hook, and the seminars I am doing for brokers and agents are almost always full to capacity. That is the good news. The bad news is that there are still many employers, especially small sponsors of flex plans, that have no idea what to do about HIPAA compliance. This bad news, however, means it is a perfect time to provide a value added service to your clients by helping them get where they need to go relative to HIPAA compliance!

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