

Bob Radecki's Top Ten List

What Agents and Brokers Need to Know about HIPAA Privacy

A tremendous amount of confusion and misinformation exists concerning the HIPAA privacy rules. All you need to do is look at a communication sent out by a national association of P&C agents, which incorrectly identified agents as HIPAA covered entities, to see an example of the problem.

As employers begin to realize that they have significant responsibilities under this law, they will naturally turn to their agent, broker or consultant for guidance. Even though most agents and brokers do not have the time or staff to serve as "HIPAA consultants", to ignore HIPAA privacy is simply an invitation for your client to turn elsewhere for help. This Top Ten List is the minimum every agent and broker needs to know, and what they should do today to prepare for a role in assisting clients with HIPAA privacy compliance.

#10 – Understand who is actually subject to the law - HIPAA defines most "group health plans" as HIPAA covered entities. Among other things this applies to fully-insured and self-funded employer sponsored plans, including medical, dental, vision, Section 125 medical reimbursement plans, Section 105 plans, and more. It is the employer sponsored "health plan", not the employer itself, that is the covered entity. However, in their role of plan sponsor and/or plan administrator, HIPAA imposes a variety of responsibilities on the employer.

#9 – Know when a client's health plan must be in compliance with the privacy rules - A group health plan must be in compliance by April 14, 2003 unless it qualifies as a "small health plan". Small health plans must be in compliance by April 14, 2004. A small health plan is a plan with less than \$5,000,000 in receipts. Receipts for fully insured plans are the group's premiums. Receipts for self-funded plans are the claims and administration costs (but not premiums for stop-loss coverage).

#8 – Don't Listen to the sky is falling rhetoric - HIPAA privacy compliance is difficult, but it is not impossible. Some of the information and material I have seen seems to be created for the sole purpose of making HIPAA look overwhelming! Remember when COBRA was passed? At the time, a national publication predicted that due to COBRA, most employers would stop offering health insurance to their employees...well...

#7 – Understand what HIPAA is supposed to do - HIPAA is not designed to make the legitimate sharing of information impossible. Doctors can still collaborate, health plans can still pay claims, and underwriters can still underwrite. HIPAA privacy rules are designed to give an individual more control over certain uses of their confidential information, not to stop legal and legitimate uses.

#6 – Prepare to enter into Business Associate Agreements with your clients – HIPAA requires covered entities to enter into Business Associate Agreements with third parties who while acting on their behalf, have access to Protected Health Information (PHI). BA agreements must be in place by the covered entities compliance date (see #9!). Agents and brokers will often be the Business Associate of the employer sponsored health plan.

#5 – Get ready to live by the terms of Business Associate Agreements – A BA agreement will require agents and brokers to implement certain procedures and policies designed to protect the confidentiality of the PHI that the covered entity shares with them.

#4 – Hold a training seminar staff and your employer clients – OK I admit it...this one is a plug! Call me.

#3 – Prepare for new rules from fully insured carriers and HMOs – Most insurance companies and HMOs are subject to the HIPAA privacy rules in 2003. Even if the employer sponsored group plan qualifies as a small health plan (see #9), the employer may be subject to new rules and requirements if it receives confidential information (like high claims data) from the carrier. You need to work closely with the carriers you represent to understand how their privacy policies will effect your fully insured clients.

#2 – Find good sources of HIPAA information for you and your clients – www.KnowHIPAA.com, a HIPAA privacy web site specifically for group health plans, is a good place to start. You can also check the Department of Health and Human Services HIPAA web sites at <http://www.cms.gov/hipaa/hipaa2/default.asp> and <http://www.hhs.gov/ocr/hipaa/>.

#1 – Remember that HIPAA is spelled with two As, not two Ps– And the most important thing you can do related to HIPAA? Don't spell it "HIPPA", like the Department of Labor did on one of their first HIPAA web sites in 1996!

Bob Radecki was the founder and former President of A.E. Roberts Company. He now spends his time helping employers, agents and brokers deal with a variety of compliance issues including HIPAA, COBRA and the FMLA (and looking for excuses to go skiing in the mountains!). Currently Bob is engaged as the principal HIPAA consultant for a major managed health care company. You can reach Bob at 612-581-6281 or rearadecki@yahoo.com.