

Benefit Brief



SUBJECT: HIPAA Portability Rule Changes

DATE: February 3, 2005

This Benefit Brief summarizes the HIPAA portability rule changes that were issued jointly by the Department of Labor, the Department of Health and Human Services and the IRS on December 30, 2004. These changes become effective for plan years beginning on or after July 1, 2005.

The HIPAA portability rules, which apply to health plans sponsored by commercial employers, municipal employers and churches, provide for availability of health coverage by limiting pre-existing condition limitations in health plans, prohibiting discrimination against employees based on health status, and guaranteeing availability of health coverage for small employers.

These final regulations make the following changes and clarifications:

- Certificates of creditable coverage must now contain an educational statement that informs individuals about their rights under HIPAA. The model statement has been updated and a copy is attached.
- Group health plans must have written procedures for individuals to request and receive certificates of creditable coverage. These procedures must include the contact information for requesting a certificate and provisions for designating another individual or entity to receive a certificate on behalf of an individual.
- Certificates must now be sent directly to a dependent who has lost coverage (rather than to the employee); If the entire family lost coverage, one certificate may be sent for the entire family.
- The regulations clarify that health plans must send a certificate to any individual who requests one (up to 24 months after coverage terminates), even if the individual is still covered under the plan.
- The regulations clarify that the following situations are considered loss of eligibility (under another plan) that triggers special enrollment rights (under your plan):
 - When an individual no longer lives in an HMO service area
 - When a dependent ages out of coverage under a parent's plan
 - When a plan no longer offers any benefits to a class of similarly situated individuals
 - When COBRA (or other) continuation is exhausted
 - When lifetime benefit limits are reached under a plan
- The regulations clarify that a special enrollment right exists even if the individual is eligible for COBRA under another plan.

- Limited scope dental and vision benefits and long term care benefits may be excepted, even if part of the medical plan, if participants have the right not to elect those benefits and must pay an additional premium or contribution to receive those benefits.
- The regulations clarify that a FSA's and HSA's are generally considered excepted benefits and do not have to comply. HRA's are not addressed in the regulations, but coverage under the high deductible health plan that is connected with the HRA plan will be sufficient to satisfy the prior coverage requirements.
- The regulations clarify that health plans maintained by foreign governments are considered creditable coverage.
- The regulations include examples of some common provisions that may be considered pre-existing condition limitations (that can only apply if the individual does not have 12 months of creditable coverage – 18 months for late enrollees). Examples include:
 - A plan provision that covers accidental injury only if the injury occurs while the individual is covered by the plan;
 - A plan provision that counts benefits under a previous plan toward the lifetime maximum;
 - A plan provision that denies benefits for pregnancy until 12 months after individual becomes eligible for benefits under the plan.

Steps that Employers with **SELF-FUNDED** Plans should take:

1. Update any Certificates of Creditable Coverage that they provide to employees or dependents upon termination of coverage.
2. Create or update procedures for issuing these Certificates.
3. Review any policy or plan document language that may violate the pre-existing condition requirements.

Steps that Employers with **INSURED** Plans should take:

In most cases, employers with insured plans will not have to do anything to comply with these new regulations, except to confirm that these Certificates are being sent by the carrier.

If you have any questions about how the HIPAA portability rules apply to your health plans, or if you have any questions about complying with these rules, please contact Judy Griffith at The Benecon Group at jgriffith@benecon.com, or the number shown below.