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Health Information Privacy Requirements Have Wide Reach

Healthcare Transaction & Litigation Practice Group

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Most people are generally familiar with the sweeping health information privacy requirements that were implemented about a decade ago. The requirements, often called "HIPAA" requirements in reference to the law that authorized them, assure patients certain access and privacy rights in connection with their sensitive health information.

The HIPAA privacy requirements apply to hospitals, physicians and other businesses that provide healthcare services, and apply to health insurance companies, HMOs and other businesses that pay for healthcare services. However, many are unaware that the HIPAA requirements also apply to other types of businesses that provide healthcare coverage to their employees through an insured or self-insured group health plan and either (i) have 50 or more plan participants or (ii) use a third party administrator to administer the plan. For employers who provide a group health plan which meets one of these requirements, a number of the HIPAA privacy requirements must be met.

Employers that offer a fully-insured group health plan through an insurance company or HMO and only receive "summary health information" are exempt from most HIPAA privacy requirements. "Summary health information" includes summaries of claims history, claims expenses or types of claims, but does not include any employee names or other identifying information. Even though these employers are not subject to most HIPAA privacy requirements, they are prohibited from intimidating or retaliating against employees who exercise any of their rights under the HIPAA privacy regulations.

On the other hand, employers who offer self-funded group health plans, or employers who offer insured plans but receive information in addition to "summary health information" are subject to a number of HIPAA privacy requirements. These requirements only apply to a "health care component" designated by the employer, which should include all personnel who are involved in health plan activities. These activities may include assisting employees in processing claims, administering flexible spending accounts and similar matters in which they could have access to employee health information. The employees included in a "health care component" of an employer are subject to many of the HIPAA privacy requirements, including the obligation to designate a privacy officer, develop policies, procedures and forms to safeguard the healthcare information, conduct training and impose disciplinary actions for violations.

Only employees included in the designated "health care component" can have access to an employee's health information provided in connection with the

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group health plan. Further, this information cannot be used by the employer in making employment decisions about plan participants or decisions about other benefits such as life insurance, disability benefits, etc. In addition, the group health plan document must include language specifying permitted and prohibited uses and disclosures of participants' health information obtained in connection with the plan.

Penalties for violations of the HIPAA privacy requirements can be significant and violations continue to make news headlines. Thus, it is more important than ever for healthcare providers, health plans and employers who offer group health plans take action to assure compliance with applicable HIPAA privacy requirements.

If you have any questions about HIPAA privacy requirements, please contact Karen Rieger or any other member of Crowe & Dunlevy's Healthcare Transaction & Litigation practice group.

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With more than 110 years of experience and nearly 30 practice groups, Crowe & Dunlevy is the one of the most experienced and established full-service legal firms in Oklahoma. The firm's attorneys are regularly ranked among the top lawyers in the nation by recognized peer-review organizations.

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