

Health Reform Transitional Reinsurance Annual Enrollment Count Submission Deadline Extended to December 5, 2014

11.17.14

Late on Friday, November 14, 2014, the Center for Medicare and Medicaid Services provided a limited bit of relief extending the deadline for *submission of enrollment counts for the transitional reinsurance program under the Affordable Care Act from November 15, 2014 until December 5, 2014 at 11:59 pm*. The notice also extended the deadline for the annual enrollment and contribution submission form, but it did not change the payment deadlines. The first portion of the transitional reinsurance premium is due by January 15, 2015 and is \$52.50 per covered life. The second portion of the transitional reinsurance premium is due by November 15, 2015 and is \$10.50 per covered life. A plan may also submit the full amount of the premium due by January 15, 2015 for the 2014 plan year in the amount of \$63.00 per covered life.

HIPAA Privacy Guidance in Response to Ebola Outbreaks

While this guidance regarding how HIPAA Privacy applies with respect to Ebola outbreaks would appear at first glance to be targeted just at health care providers, the disclosures it is referencing are applicable to all covered entities under the HIPAA Privacy regulations. The Privacy regulations authorize a covered entity to disclose information to a Public Health Authority (see below regarding a recent expansion) that is authorized by law to collect or receive health information for the purpose of preventing or controlling disease, injury or disability, including reporting vital events and conducting public health surveillance, investigations and interventions. The notice outlines when a disclosure may occur for public health surveillance and states that a waiver can be provided when the President or Secretary of HHS issues a waiver, but no such waiver is announced in the notification. While the November Bulletin regarding HIPAA Privacy in Emergency Situations is issued in light of the Ebola outbreak and other events, it does not create any new waiver for the sharing of information related to the Ebola outbreak, but merely reminds that the covered entities and business associates are subject to HIPAA Privacy requirements unless those requirements are waived by either the Secretary of HHS or the President. *Thus, the HIPAA Privacy requirements continue to apply without alteration during the Ebola outbreak.*

HIPAA Privacy Guidance Expands Public Health Authorities to Whom Information Must be Disclosed

Late in May this year, the National Transportation Safety Board issued a notice in the Federal Register to notify health care providers and health plans that the National Transportation Safety Board (“NTSB”) is a public health authority under the HIPAA Privacy regulations. As a “public health authority” the NTSB is able to request health information from health plans and health care providers when it investigates accidents and “for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions” which means yet another governmental agency can be monitoring health records in health plans and at health care providers. If an employer includes an in-house clinical function as part of its safety efforts, it will be interesting to see how broadly this public health authority disclosure permission will be used since this clearly indicates that it intended to be is far broader than just reporting individuals who have certain designated communicable diseases. If a health plan receives a request for health information from the NTSB, it should respond to the request in the same manner as would have replied to a request from the Department of Health and Human Services.

January 1, 2015 Deadline for Medicare Secondary Payer (“MSP”) Recognition of Same Sex Spouses for MMSEA 111 and Aged Spouse MSP Protection

In June, the Center for Medicare and Medicaid Services issued a notice regarding the treatment of individuals protected by Medicare secondary payer statutory provisions protecting the working aged and their spouses. The notice clarified that Medicare will treat same gender spouses as spouses to be recognized based upon their marriage being celebrated in a state recognizing their marriage. For plans that are not extending coverage to same sex spouses as spouses, but instead only offering domestic partner coverage, those plans must be able to identify which persons covered as domestic partners or dependents who are same gender spouses which must be recognized as spouses for Medicare Secondary Payer

protection and for the electronic interface between group health plans and Medicare to share information on covered persons to facilitate the correct payment of claims subject to Medicare Secondary Payer protection.

If your plan does not cover same gender spouses as spouses, but permits coverage of such persons on some other basis, the group health plan needs to ensure that its third party administrator is identifying any persons who are same gender spouses and protected by Medicare Secondary Payer to ensure that their claims are processed *correctly beginning on and after January 1, 2015*. Failure to comply with the correct payment of claims protected by Medicare Secondary Payer statutes are subject to a number of penalties. This may require coding the same person as being covered under the plan's terms in one capacity and as protected for Medicare Secondary Payer purposes as having a different status.

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