Legislative Brief

HIPAA - HIPAA Health Plan Identifier (HPID)

August 14, 2014

Health Plans Required to Obtain a Health Plan Identifier (HPID)

As a follow-up to our prior article regarding the HIPAA health plan identifier, this article further clarifies when a health plan must obtain a HIPAA health plan identifier (HPID). **In general, a group health plan that is self-funded, or treated as self-funded, will need to obtain a health plan identifier by the required deadline.**

SUMMARY

- **The deadline to obtain a HIPAA health plan identifier is Nov. 5, 2014 (small health plans have until Nov. 5, 2015).**

  A small health plan is a health plan with annual receipts of $5 million or less. Although HHS has not provided a definition for receipts, a reasonable interpretation is that for: (a) insured health plans "receipts" means premiums paid for coverage (on the part of both the employer and employee); and (b) self-funded health plans "receipts" means the amount an employer takes out of its general assets to pay claims and expenses.

- Only controlling health plans (CHPs) are required to obtain health plan identifiers (HPIDs) by the above deadline.

  While sub-health plans (SHPs) generally are not required to obtain HPIDs, a controlling health plan may ask or require a sub-health plan to obtain a health plan identifier.

- The definition of a "health plan" for purposes of determining whether a health plan identifier must be obtained, includes not only group health plans, but also health insurance issuers and HMOs.

- If your group health plan is:

  - Self-funded: A self-funded group health plan generally meets the definition of a controlling health plan and should take action to obtain a health plan identifier.
  - Fully-Insured: A fully insured group health plan is not required to obtain a health plan identifier (the health insurance issuer is the controlling health plan that must obtain a health plan identifier, your plan is a sub-health plan).
  - Partially Self-Funded: The insurance industry has many variances of partially self-funded plans. If your group health plan is partially self-funded, ask your insurance carrier if they are treating the arrangement as fully-insured or self-funded. If your partially self-funded group health plan is treated as self-funded by your insurer, it likely meets the definition of a controlling health plan and should obtain a health plan identifier.
  - Part of a Wrap Plan: The guidance does not clearly state whether your wrap plan is required to obtain a health plan identifier, but it is preferable to error on the side of caution and obtain a health plan identifier for your wrap plan before the deadline. A "wrap plan" is a plan that combines and incorporates, by reference, one or more welfare benefit components, or welfare benefit plans, available to employees, into a single plan.

- For purposes of the health plan identifier, the definition of a "group health plan" includes: fully insured and self-insured group health plans, dental plans, vision plans, prescription drug plans, health flexible spending accounts (health FSAs), health reimbursement accounts (HRAs), wellness plans (when medical care is offered) and some EAPS (when medical care other than general referrals are provided).

DEFINITION OF A CONTROLLING HEALTH PLAN (CHP)

A controlling health plan is defined as a health plan that either: (1) controls its own business activities, actions or policies, or (2) is controlled by an entity that is not a health plan and if it has a sub-health plan, exercises sufficient control over the SHP to direct its/their business activities, actions or policies.

Two questions should be asked when trying to determine whether a plan is a controlling health plan:

1. Is the entity a health plan?
2. Is the entity controlled by either itself or a non-health plan organization?

If the answer to both of these questions is yes, then the entity is a controlling health plan and an health plan identifier must be obtained.

DEFINITION OF A SUB-HEALTH PLAN (SHP)

A "sub-health plan" is a health plan whose business activities, actions or policies are directed by a controlling health plan.

DETERMINING WHETHER A HEALTH PLAN IS A CONTROLLING HEALTH PLAN (CHP) VERSUS A SUB-HEALTH PLAN (SHP)

The final rule does not clarify how the definition of a "controlling health plan" specifically applies to employer-sponsored group health plans, or when a group health plan will be considered a controlling health plan versus a sub-health plan. The definition of "health plan" includes health insurance issuers, HMOs and group health plans. While additional clarifying guidance from HHS would be helpful, from the final rule's preamble and the definitions under 160.103, it appears:

- Health Insurance Issuer: A health insurance issuer meets the definition of a health plan, and it typically controls its own business activities actions or policies, so it is a controlling health plan that should obtain a health plan identifier.
- Health Maintenance Organization (HMO): A health maintenance organization meets the definition of a health plan, and it typically controls its own business activities actions or policies, so it is a controlling health plan that should obtain a health plan identifier.
- Group Health Plan:
    - A "group health plan" is an ERISA welfare benefit plan that provides medical care to employees and/or their dependents directly or through insurance, reimbursement, or otherwise that either: (a) has 50 or more participants (as defined under Sec. 3(7) of ERISA) or (b) is administered by an entity other than the employer that established and maintains the plan.
    - An "ERISA welfare benefit plan" includes group health plans, dental plans, vision plans, prescription drug plans, health flexible spending accounts (health FSAs), health reimbursement accounts (HRAs), wellness plans (when medical care is offered), and some EAPs (when medical care other than general referrals is provided).
    - Fully-Insured Group Health Plan: Generally a fully-insured group health plan is a sub-health plan, so it is not required to obtain a health plan identifier by the deadline. An insurance issuer typically controls the activities, actions or policies regarding health claims for the group health plans it fully insures — *i.e.*, it is the controlling health plan of its fully-insured group health plans (which are sub-health plans). Note: While sub-health plans generally are not required to obtain health plan identifiers, an insurance carrier (i.e., a controlling health plan) can require a fully-insured health plan to obtain a health plan identifier. If your insurance carrier requires your fully-insured plan to obtain a health plan identifier, the Nov. 5, 2014 deadline is not applicable.
    - Self-Funded Group Health Plans: A self-funded group health plan that has 50 or more participants, or that has less than 50 participants but has some other entity administer claims on behalf of the plan (*e.g.*, a TPA or PBM), is a health plan. Since such a self-funded group health plan is typically controlled by an employer who is the plan sponsor and/or plan administer, but not a health plan, it is a controlling health plan and must obtain a health plan identifier by the deadline.

      Small self-funded group health plan exception: A self-funded group health plan that has less than 50 participants, and is not administered by any entity other than the employer who established and maintains the plan, does not meet the definition of a health plan under these rules; thus, the requirement to obtain a health plan identifier is not applicable. ERISA Sec. 3(7) defines "participant" as any employee or former employee of an employer, or any member or former member of an employee organization, who is or may become eligible to receive a benefit of any type from an employee benefit plan which covers employees of such employer or members of such organization, or whose beneficiaries may be

eligible to receive any such benefit. (Note: The preamble to the final regulations recognize that very few self-insured group health plans conduct standard transactions themselves, but rather they typically contract with TPAs or insurance issuers to administer the plans.)

- Partially Self-Funded Group Health Plans: The insurance industry has many variances of partially self-funded group health plans. If your group health plan is partially self-funded, we recommend that you ask your insurance carrier if they are treating the arrangement as fully-insured or self-funded. If the insurance carrier is treating the arrangement as a self-funded group health plan, the group health plan will likely meet the definition of a controlling health plan and should obtain a health plan identifier by the deadline.
- Wrap Plans: A "wrap plan" is a plan that combines and incorporates, by reference, one or more welfare benefit components, or welfare benefit plans, available to employees, into a single plan. The guidance does not specify whether a benefit component or benefit plan that is a part of an ERISA wrap plan is required to obtain a health plan identifier. If all of an employer's health plans are wrapped into a single ERISA wrap plan, with solely one plan number for Form 5500 reporting purposes, it is likely that the wrap plan is a controlling health plan and a health plan identifier should be obtained. If each of an employer's health plans are wrapped into a single ERISA wrap plan, but each plan has its own plan number (including the ERISA wrap plan) for Form 500 reporting purposes, then each component health plan may be a controlling health plan and a health plan identifier may be needed for each component plan. Note: Given the lack of certainty, it is preferable to error on the side of caution—if an employer maintains an ERISA wrap plan, at least one health plan identifier for the ERISA wrap plan should be obtained before the deadline. Additional health plan identifiers can be obtained later for component benefits if subsequent guidance requires it.
- Health Flexible Spending Accounts and Health Reimbursement Accounts: Generally, the administration of a health flexible spending account (health FSA) or health reimbursement account (HRA) will dictate whether a health plan identifier should be obtained. Most health FSAs and HRAs do not conduct standard transactions, because they reimburse employees directly. As mentioned in our prior article, a health plan identifier is required for any standard transaction effective Nov. 7, 2016 . A "standard transaction" is a transaction between two covered entities or a transaction between a covered entity and a business associate (employees are generally neither). However, if a health FSA or HRA reimburses healthcare providers directly, or receives claims directly from a covered entity, then a health plan identifier should be obtained by the deadline.

SMALL HEALTH PLAN EXTENSION

Small health plans have an additional year (until Nov. 15, 2015) to obtain a health plan identifier. A "small health plan" is a health plan with annual receipts of $5 million or less. HHS has not provided guidance regarding the definition of "annual receipts" for purposes of employer-sponsored group health plans. A reasonable interpretation is that for an insured plan the premiums paid for coverage (on the part of both the employer and the employee) are its annual receipts, and for a self-funded plan, the amount an employer takes out of its general assets to pay claims and expenses are its annual receipts. Additionally, if a single employer offers multiple plans, a reasonable interpretation is to align the plan size determination with how the plans are identified in its Form 5500 filings (*i.e.*, if an employer files a 5500 for each plan under a different plan number, the employer probably should consider each plan separately in determining the $5 million threshold). Since the guidance is not perfectly clear, if your self-funded health plan is close to the $5 million threshold, a health plan identifier should be obtained by Nov. 15, 2014 to ensure timely compliance.

ADDITIONAL INFORMATION

Additional guidance regarding health plan identifiers, including a detailed user manual, webinars, and FAQs can be found at http://www.cms.gov/Regulations-and-Guidance/HIPAA-Administrative-Simplification/Affordable-Care-Act/Health-Plan-Identifier.html. This is the same website where health plans can register and obtain their health plan identifiers.

The health care reform law—the Affordable Care Act (ACA)—has many complex requirements for employers and health plans. Please contact Kapnick Insurance Group with any questions about how you can prepare for any of the health care reform requirements. This Kapnick Insurance Group Update is not intended to be exhaustive nor should any discussion or opinions be construed as legal or tax advice. The information contained in this communication is intended to provide general information regarding health care reform and related topics, and is based on general information available at the time it was prepared. Readers should contact their tax and/or legal counsel for advice that is appropriate to their specific circumstances. This information cannot be used by any taxpayer to avoid tax penalties. MAR