



Summary of HIPAA Portability Protection

Recently, there have been several additions to the Health Insurance Portability and Accountability Act (HIPAA) regarding **privacy** and **security** issues. (See the March 31, 2004 [RSI on the Industry HIPAA Update](#) for more detailed information regarding HIPAA privacy.) Initially, when HIPAA was created in 1996, its main focus was on protecting workers and their families by:

- Limiting exclusions for **preexisting medical conditions** and providing credit against the exclusions for **prior health coverage**;
- Providing **special enrollment rights** to individuals who lose other health coverage or add a new dependent;
- **Prohibiting discrimination** in enrollment and in premiums based on health status-related factors.

RECENT CHANGES TO HIPAA PORTABILITY

Final HIPAA regulations were recently passed which will apply to plan years beginning *on or after July 1, 2005*. The final regulations don't significantly modify the current HIPAA requirements, but they do include a few minor changes regarding pre-existing condition limitations, creditable coverage and special enrollment.

Certificates of Creditable Coverage

- I. Revised Notice:** The *Certificate of Creditable Coverage*, commonly known as the "HIPAA Certificate", must now contain an educational statement. A revised Certificate was provided by the DOL and is attached below. *Note that most carriers actually send the HIPAA Certificate to an employee when plan participation terminates, but it is still the employer's responsibility to make sure that it is provided.*
* [Certificate of Creditable Coverage](#)
- II. Revised Procedures:**
 - a. Group health plans and insurers cannot impose any *time limit* on an employee to present a *Certificate of Creditable Coverage* from a prior health plan.
 - b. Group health plans must establish written procedures which clearly define the contact information for an employee to request a *Certificate of Creditable Coverage*.
 - c. The regulations additionally recognize health plans maintained by foreign governments, State Children's Health Insurance Programs and public health programs such as Medicare, TRICARE and the Federal Employees Health Benefit Program as creditable coverage.

Pre-existing Conditions

- I. Revised Notice:** In order for an employer to impose a preexisting condition exclusion, it must provide written notice to its employees prior to enrollment. The revised *HIPAA Initial Notice* which explains any pre-existing condition exclusions (PCE), must now include the contact name, address and phone number where an employee can get further information on PCE. It is attached under the Special Enrollment section of this article as most employers use the same notice to explain both PCE and Special Enrollment.
- II. New Notice:** If the group does impose pre-existing condition exclusions and has determined that an employee is subject to this exclusion, the group must notify the employee and explain how long the PCE will last. A sample *Individual Notice of Pre-existing Condition Period* is attached below. If the group DOES NOT impose any PCE, the notice below is not required.
* [Individual Notice of Pre-existing Condition Period](#)
- III. Revised Procedures:**
 - a. The final rules clarify that certain plan restrictions are, in fact, preexisting condition exclusions which violate HIPAA's limitations on PCE, such as the exclusion of coverage for pregnancy during the first year of coverage.
 - b. The final regulations also state that a **new** PCE can't be imposed on an individual who switches between benefit options, e.g., moving from a PPO to an HMO.

Special Enrollment

- I. Revised Notice:** The *HIPAA Initial Notice* has been modified to include the revisions to HIPAA regarding BOTH special enrollment and pre-existing conditions, as mentioned above, and is attached below. This notice must be distributed to all employees at or before the time they enroll in the employer's plan.
* [HIPAA Initial Notice](#)
- II. Optional New Notice:** The revised *HIPAA Initial Notice* now contains a separate form for employees to complete when they decline enrollment in the employer's health plan. The *Form for Employees to Decline Coverage* asks employees to identify their coverage under another group health plan, as well as any other coverage for their dependents. If an employee does not complete this form and loses coverage under another health plan, they can be denied special enrollment. The employer can eliminate this form as long as they require no proof of an employee's or dependent's loss of coverage in order to obtain special enrollment.
* [Form for Employees to Decline Coverage](#)
- III. Revised Procedures:**
 - a. The final rules note that special enrollees must be given all enrollment options available to similarly situated employees at the time of initial eligibility. Enrolling a new dependent can't be limited to simply adding them to the employee's current coverage option.
 - b. In addition to allowing special enrollment for birth, adoption or marriage, several new situations that would trigger special enrollment are provided:

- i. Reaching a lifetime maximum for all benefits under another plan;
- ii. Moving out of an HMO service area if coverage then becomes unavailable;
- iii. Termination of employer contributions.

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