

March 13, 2006

### Health Plans: Spring Deadlines

The following is a brief reminder of upcoming notice deadlines for group health plans.

#### Notice to Centers for Medicare and Medicaid Services

Employers who offer prescription drug coverage must inform the Centers for Medicare and Medicaid Services (CMS) by **March 31, 2006** as to whether their drug coverage is creditable or noncreditable under Medicare. For a review of the simplified determination of "creditable" coverage, click here for Seyfarth Shaw's June 2005 Management Alert on Creditable Coverage. Employers must complete an electronic disclosure form using the CMS Web site at <http://www.cms.hhs.gov/CreditableCoverage>. The disclosure form is linked as "Disclosure to CMS Form." Employers are asked to complete the following information for each type of coverage they offer:

- The name, street address and telephone number of the employer sponsoring the plan;
- The employer's EIN;
- Type of coverage, which will be "group health plan";
- The number of different benefit options available (e.g, HMO, PPO, etc.);
- Whether each benefit option has creditable or noncreditable prescription drug coverage;
- The beginning and ending date of the plan year;
- An estimate of the number of Part D eligible (Medicare) individuals covered by each option as of the beginning of the plan year;
- The date the notices of creditable or noncreditable coverage were provided to Part D eligible individuals (or if provided over a range of dates, the last date it was provided), and if the status of coverage has changed, the date of the change;
- The name, title and e-mail address of the authorized individual employee submitting the electronic form, and the date the form is submitted.

For employers with subsidiaries, one CMS disclosure form may be submitted to CMS for the entire entity, if the plan year is the same for all subsidiaries. Employers may also choose to submit separate forms for each subsidiary.

All employers who sponsor group health plans that provide prescription drug coverage are required to submit the CMS disclosure, including churches, federal, state and local governments. Plans for active and retired employees also must submit the CMS disclosure. No disclosures are required for health flexible spending accounts (FSAs) or health savings accounts (HSAs). Plans for retired employees that have been approved for the Retiree Drug Subsidy are exempt from filing the CMS disclosure with respect to those qualified covered retirees, because CMS has already received information regarding actuarial equivalence with respect to these retirees. Note that if an employer maintains multiple plans (e.g. separate plans for active and retired employees), the employer will need to file a CMS disclosure for any plan that does not cover qualified covered retirees.

The initial CMS disclosure must be provided by **March 31, 2006**. After this initial disclosure, if prescription drug coverage is terminated or there is a change in the status of creditable coverage, employers must submit a new CMS disclosure within 30 days of the change (and also provide an updated notice to participants). For plan years that end in 2007 and beyond, employers must submit the electronic disclosure form every year within 60 days after the first day of the plan year.

### **HIPAA Privacy Notice**

Employers with large group health plans must send to participants a notice of availability of the plan's HIPAA Privacy Notice by **April 14, 2006**. Generally, a large group health plan is a health plan that has annual receipts of \$5 million or more. (Additional information about the distinction between large and small group health plans may be found at <http://cms.hhs.gov/hipaa/hipaa2/default.asp>).

The notice of availability should state that the plan maintains a Notice of Privacy Practices that provides information to individuals whose protected health information (PHI) will be used or maintained by the plan. The notice of availability should also provide participants with the information on how and where to obtain a copy of the plan's Privacy Notice. Employers may also meet this requirement by sending participants the HIPAA Privacy Notice directly.

### **HIPAA Security Compliance**

Small group health plans must comply with the HIPAA security rules by **April 20, 2006**. A "small" group health plan is a health plan that has annual receipts of \$5 million or less. The HIPAA security rules require group health plans to take certain steps to protect the integrity, confidentiality and availability of protected health information that is stored or transmitted by electronic media. Large group health plans were required to comply with the HIPAA security rules by April 20, 2005.

*If you have any questions concerning the deadlines for group health plans, please contact the Seyfarth Shaw LLP attorney with whom you work or any employee benefits attorney on the website at [www.seyfarth.com](http://www.seyfarth.com).*



**Breadth. Depth. Results.**

This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. For further information about these contents, please contact any Seyfarth Shaw LLP office. Copyright © 2006 Seyfarth Shaw LLP. All Rights Reserved.