

# Health Care Reform Management Alert Series



## New CMS Guidance as HPID Deadline Approaches Issue 86

By Joy Sellstrom and Benjamin J. Conley

*This is the eighty-sixth issue in our series of alerts for employers on selected topics in health care reform. (Click [here](#) to access our general summary of health care reform and other issues in this series). This series of Health Care Reform Management Alerts is designed to provide an in-depth analysis of certain aspects of health care reform and how it will impact your employer-sponsored plans.*

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) instructed the Department of Health and Human Services (HHS) to adopt standards for the electronic transmission of certain routine health care transactions (sometimes referred to as “standard transactions”) and standards for a standard unique health plan identifier (HPID) for each health plan to use in the health care system. In 2012, final HHS regulations were issued that required “controlling health plans” (CHPs) to obtain an HPID by **November 5, 2014**. (Small health plans, defined as health plans with annual receipts of \$5 million or less, have until November 5, 2015.) Beginning November 7, 2016, an HPID is required to be used by (large and small) health plans and business associates in standard transactions. Sub-health plans (SHPs) are not required to obtain an HPID.

Regulations define a CHP as a health plan that (1) controls its own business activities, actions or policies; or (2) is controlled by an entity that is not a health plan. An entity also will be a CHP if it directs the business activities, actions, or policies of one or more SHPs. An SHP is defined as a health plan whose business activities, actions, or policies are directed by a CHP.

Unfortunately, the HPID application system appears to have been developed with health insurers in mind, resulting in confusion for sponsors of self-funded plans. Until recently, it had been rumored that the Centers for Medicare and Medicaid Services (CMS) intended to modify the system to accommodate self-funded plan sponsors or even to exempt such plans from the process. With just over a month until the deadline for large plans, it does not appear that such an exemption is forthcoming.

Recent CMS guidance included a [step-by-step chart](#) describing how to obtain an HPID, as well as [frequently asked questions](#). Although the FAQs provide some helpful guidance, unanswered questions remain. Below we address some of the most common issues experienced by sponsors of self-funded plans:

**Q: What do I do when I’m asked for an NAIC number?**

A: The NAIC number is an insurance designation that is not applicable to self-funded plans. Self-funded plan sponsors should select “Not Applicable” in the drop-down box when prompted.

**Q: Do I need to obtain an HPID for my insured health plans?**

A: No, the FAQs provide that the insurance issuer is responsible for obtaining an HPID for insured plans.

**Q: If I offer multiple benefit options under a single “wrap plan,” am I required to obtain an HPID for each underlying benefit option that constitutes a “health plan”?**

A: While not clearly addressed in CMS guidance, it would be reasonable for a plan sponsor to conclude that it is only required to obtain one HPID for its self-funded health programs - either treating the wrap plan as the CHP and the underlying benefit programs as SHPs; or aggregating all self-funded benefit options into one CHP. Alternatively, a plan sponsor could obtain an HPID for each self-funded benefit option. The FAQs provide the following example:

*“For example, a wrap-plan that includes a fully-insured medical plan, self-insured dental plan, and HRA that covers deductibles, would require the employer to obtain an HPID only for the self-insured dental plan. The carrier would be responsible for obtaining the HPID for the fully-insured medical plan. The HRA only covers deductibles; therefore, an HPID is not required.”*

**Q: Are flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), and health savings accounts (HSAs) required to get HPIDs?**

A: The FAQs state that FSAs and HSAs are individual accounts directed by the consumer to pay health care costs. As such, FSAs and HSAs are not required to obtain an HPID.

HRAs may require an HPID if they meet the definition of health plan. However, HRAs that cover deductibles only or out-of-pocket costs do not require an HPID. Also, note that if an HRA that covers more than deductibles and out-of-pocket costs is part of a wrap plan, the plan sponsor may reasonably rely on the wrap plan’s HPID for purposes of the HRA.

Plan sponsors are advised to apply for an HPID sufficiently in advance of the deadline to avoid technology problems.

*Joy Sellstrom* and *Benjamin J. Conley* are members of Seyfarth’s Employee Benefits & Executive Compensation Department. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Joy Sellstrom at [jsellstrom@seyfarth.com](mailto:jsellstrom@seyfarth.com) or Benjamin J. Conley at [bconley@seyfarth.com](mailto:bconley@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This Management Alert is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a 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. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

**Seyfarth Shaw LLP Health Care Reform Alert | October 2, 2014**

©2014 Seyfarth Shaw LLP. All rights reserved. “Seyfarth Shaw” refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.