

FleetBoston Financial

HIPAA Privacy Compliance

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HIPAA Privacy Compliance

- Challenges
 - Balance respect for personal health information of employees and customers under HIPAA with other existing state and federal privacy regulations
 - Ensure corporate-wide compliance throughout a large and diverse organization with multiple governance platforms
 - Federal regulatory examinations on financial privacy that may include HIPAA compliance

HIPAA Privacy Compliance

- Two Primary Compliance Areas
 - Fleet as Sponsor of Group Health Insurance
 - Fleet as Business Associate to Covered Entities

I. HIPAA Privacy Compliance: Fleet as Plan Sponsor

- Fleet as a Plan Sponsor is NOT a Covered Entity under HIPAA, but it has to act for the health plan
- For self-insured plans, the Plan Sponsor is legally responsible for ensuring HIPAA compliance

HIPAA Privacy Compliance: Fleet as Plan Sponsor

- Fleet's Group Health Plan may disclose, or permit a health insurance issuer or HMO to disclose, protected health information (PHI) to Fleet (as the the Plan Sponsor) in the following situations:
 - The individual authorizes the disclosure;
 - The information is “summary health information” that is disclosed for certain purposes;
 - The information is de-identified; or
 - The plan documents are amended to restrict the uses and disclosures of PHI to the Plan Sponsor

HIPAA Privacy Compliance: Fleet as Plan Sponsor

- HIPAA requires authorization to use personal employee and dependent individually identifiable health information to communicate with benefit-plan vendors for purposes of eligibility review and claims administration.
 - Currently, a Fleet employee grants “implicit consent” for authorization for this purposes by enrolling in plan.

HIPAA Privacy Compliance:

Fleet as Plan Sponsor

- Corporate-wide audit of internal and external health privacy information practices underway
 - Ascertain Fleet's obligations as Plan Sponsor of Group Health Plans.
- Conduct Audit/Due Diligence Review
 - Review privacy policies of third-party vendors of health and welfare plans that have relationships with Fleet to insure information would be used for plan administration purposes and not for any other purpose without express written authorization of the employee.
 - Give health and welfare plan vendors a copy of FleetBoston Employee Privacy Statement regarding the handling of benefit-plan information for employees.

Issues Fleet Will Have to Consider as a Plan Sponsor

- Amendment of Health Plan documents (the contract between Fleet and its health care plan) to:
 - Reflect and restrict uses and disclosures of PHI
 - Require certification regarding the use and disclosure of PHI
- Provision of notice of privacy practices to those insured by Group Health Plan
 - This function (but not the responsibility) may be contracted to a Third Party Administrator

Issues Fleet Will Have to Consider as a Plan Sponsor

- Provision of the rights of accessing, amending, and accounting for PHI maintained in enrollment, payment, claims adjudication, case, and medical management records systems
- Development and implementation of policies that reasonably: (a) limit the amount of PHI used and disclosed to that which is minimally necessary, and (b) limit who has access to PHI

Issues Fleet Will Have to Consider as a Plan Sponsor

- In order for Fleet as a Plan Sponsor to receive PHI, the Plan documents may need to be amended to:
 - Identify the Fleet employees or other persons who will have access to PHI
 - Restrict the access by these employees and persons to the plan administration functions that Fleet (as the Plan Sponsor) performs for the Group Health Plan
 - Provide a mechanism to resolve any issues of noncompliance by these employees or persons
 - Establish the permitted and required uses and disclosures of PHI by Fleet (as the Plan Sponsor)
 - Ensure that Fleet will not use PHI for employment-related actions or decisions or in connection with employment benefits
 - Require certification from Fleet regarding use and disclosure

Issues Fleet Will Have to Consider as a Plan Sponsor

- Fleet as a Plan Sponsor may need to certify to the following:
 - No use or disclosure except in accordance with Plan documents or as required by law
 - Anyone to whom disclosure is made will agree to same restrictions and conditions that apply to the Plan Sponsor
 - Will not use PHI for employment-related actions or decisions or in connection with employment benefits
 - Will report violations to Health Plan
 - Will conform to HIPAA access and amendment requirements

Issues Fleet Will Have to Consider as a Plan Sponsor

- Fleet will not need to amend its Plan documents for disclosure of PHI for:
 - Sponsor enrollment and disenrollment information
 - Disclosure of Summary Health Information that will be used for:
 - Obtaining premium bids from Health Plans for providing insurance coverage under the Group Health Plan or
 - Modifying, amending, or terminating the Group Health Plan

II. HIPAA Privacy Compliance: Fleet as Business Associate

- Corporate-wide audit of internal and external medical privacy information practices underway
 - Ascertain Fleet's obligations as Plan Sponsor of Group Health Plans.

II. HIPAA Privacy Compliance: Fleet as Business Associate

- Conduct Audit/Due Diligence Review
 - Evaluate and assess Fleet exposure as a business associate to commercial customers that are covered entities, such as hospitals or doctors' clinics.
 - Identify and modify contracts with Covered Entities to comply with HIPAA privacy requirements
 - Mitigate risk
 - Reputational: Loss of business of customers that are covered entities
 - Compliance: SEC Disclosure Requirements
 - Legal: Tort Liability, Contractual Liability
 - Potential FTC Liability (for failure to follow stated privacy practices)

Importance of Identifying Business Associate Arrangements

- Covered Entity's disclosure of PHI to Fleet and Fleet's use and disclosure of PHI will be limited by Covered Entity's Notice of Privacy Practices, thereby impacting Fleet's business
- If Covered Entity fails to enter into Business Associate contract with Fleet by appropriate effective date, Covered Entity cannot continue to disclose PHI to Fleet
- PHI now supplied to Fleet may be limited (e.g., special rules regarding Psychiatry Notes, which require authorization to use or disclose)

FleetBoston Financial Employee Privacy Statement

“FleetBoston Financial uses employee personal information only when necessary to meet employee needs, to fulfill compelling business needs, to protect individual safety and security, or when required by law.”

- Areas addressed:
 - Use of Social Security numbers
 - Pre-employment data gathering
 - Employee financial information
 - Use of communications resources
 - Benefit-plan information

FleetBoston Financial Employee Privacy Statement (continued)

- Fleet’s Privacy Statement disclosures to its employees:
 - *“Unless otherwise required by law, FleetBoston Financial will only provide personal information to selected benefit plan administrators when directed to do so by the employee, through his/her enrollment in a particular benefit plan.”*
 - *“By enrolling in a Fleet benefit plan, an employee provides implicit consent to give that plan and or administrator access to personally identifiable information for the employee and dependents covered by the plan.”*

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Employee Privacy Statement

(continued)

- Policy Statement on Privacy of Benefit Plan Information:
 - *“The plan and or administrator is allowed to use this information to work with benefit plan providers only to decide what benefits apply and to pay claims for benefit services rendered.”*
 - *“The plan and or administrator may need to consult with FleetBoston Financial regarding eligibility or claims issues as it relates to coverage. In those instances, the plan and or administrator will only reveal to FleetBoston Financial the information necessary to resolve the specific problem or issue.”*

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