

**STATE OF WISCONSIN
DEPARTMENT OF EMPLOYEE TRUST FUNDS
801 West Badger Road
Madison, WI 53702**

CORRESPONDENCE MEMORANDUM

DATE: May 23, 2002

TO: Executive Staff and Office Directors

FROM: HIPAA Workgroup (Sonya Sidky and Kari Jo Zika, Co-Chairs; Team Members: Jon Forde, Mary Pierick, Wendy Pink, Rob Weber, Mary Willett)

SUBJECT: HIPAA Regulations – Executive Summary

A workgroup was established to examine how the Department of Employee Trust Funds (ETF) is affected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). This committee has produced the following report to describe the HIPAA provisions and provide recommended actions to ensure the administration of the health benefit plans authorized by Chapter 40 of Wisconsin Statutes is in compliance by the mandatory deadlines.

The impacts of HIPAA are widespread and complex and the committee is providing their best effort to detail how ETF is affected. This report should not be considered a comprehensive or complete analysis as there is little definitive information available regarding how government benefit plans in general must comply or how the specific structure of the ETF health benefits (standard plans and HMOs) are covered under HIPAA.

The ultimate conclusion of this group is that more research and analysis is needed to ascertain the responsibilities of ETF related to HIPAA compliance. Our primary recommendation is that ETF designate a privacy compliance officer to be responsible for HIPAA compliance. This could be accomplished with a project appointment or an outside contractor, such as a consulting firm, to prepare a detailed analysis of the HIPAA requirements that affect ETF benefits and how compliance can best be met. The group further has concluded that, at least initially, the responsibilities of the compliance official will be significant and too overwhelming to include as an additional assignment to the duties of a current employee.

To proceed with the group's assignment, we divided the HIPAA requirements into two parts for review and analysis. This report includes two separate memos, which are attached to discuss the group's findings. Attachment 1 addresses ETF compliance with electronic standards. Attachment 2 provides detail on the privacy regulations of HIPAA and its effect on ETF. This executive summary provides a brief overview of the committee's findings and our recommendations.

Part 1 – HIPAA Electronic Data Interchange (EDI) Standards

HIPAA sets forth specific standards for the electronic transmission of data and applies to health plans, health care clearinghouses and health care providers. The regulations apply to all

specifically defined transactions. Entities that are covered by the electronic standard rules¹ must comply by October 16, 2002. An extension to delay conformance for one year is possible but the entity must submit a compliance plan with the Department of Health and Human Services (DHH) by October 15, 2002 that includes the following:

- an analysis describing why the delay is needed,
- a project description that includes budget, work plan, schedule and implementation strategy for achieving compliance,
- who (internal or contractor) will be responsible for the project, and
- a specified testing period that begins no later than April 16, 2003.

A question remains as to the extent of ETF's status as a covered entity. However, EDI rules will cover the self-insured standard plans and ETF may be considered a clearinghouse in regard to the HMOs and our relationship with local governments.

Although there is little covered data that is currently transmitted electronically by ETF, there likely will be future initiatives to move to a more paperless process in the future. Additionally, our business associates (such as the HMOs and third party administrator of the standard plan) will be required to be HIPAA compliant and, as such, will likely prefer or require that the data exchanges from ETF follow the EDI standards.

Based on the groups findings, we recommend that ETF consider the following to address compliance with the EDI standards under HIPAA:

1. Submit a compliance plan to DHH (by October 15, 2002) to extend the deadline for compliance with the EDI standards to October 16, 2003.
2. Require Blue Cross Blue Shield (BCBS), the standard plan administrator, to provide a report to ETF on their HIPAA compliance efforts; if they will be applying for a compliance extension, consideration should be given to coordinate our request with theirs.
3. Confirm with the HMO providers how they are complying with HIPAA and what effect the electronic standards might have on the exchange of information between these providers and ETF.
4. Review contracts with HMOs and standard plan administrator to determine if changes are necessary.
5. Adopt the EDI standard transaction codes (ANSI 834) for enrollment data, where practical, as well as in the development of the benefit payment system currently underway.
6. Monitor internal activities, business practices and relationships with business associates, which could change the status of ETF as a covered entity under HIPAA.

Part 2 – HIPAA Privacy Regulations

The purpose of HIPAA was to simplify the administration of health care and health benefit payments and facilitate the efficient transfer of medical information between and among providers and payors through electronic data exchanges in a nationally mandated standard

¹ Electronic Data Interchange and Medical Code Set Rules

format. The act recognized that this system could impact the privacy of personal health data. Therefore, HIPAA also included specific requirements to protect the privacy of this information. The deadline for compliance for the privacy regulations is April 14, 2003.

As with the EDI standards, there is inconclusive information as to ETF's status as a covered entity for the privacy regulations. Because of our contractual relationships with the HMO providers and standard plan administrator (which are considered our "business associates" under the HHS rules), there are several aspects of HIPAA privacy regulations that will apply to ETF and need further examination to determine specific compliance requirements.

Public opinion also should be considered when deciding how ETF should comply with the HIPAA privacy regulations. Participants have an increasing awareness of the need to protect personal information, including health data and social security numbers, and rely on ETF to protect such data. Conforming to the HIPAA mandates becomes good public policy, even if it is determined that ETF is not a directly covered entity.

Based on the group's review of the HIPAA privacy regulations, we recommend that ETF consider the following:

1. Designate a privacy compliance officer to implement policies and procedures related to privacy and act as the contact person to handle complaints about privacy.
2. Complete a comprehensive review of state statutes and administrative rules to determine if changes are necessary to conform Wisconsin laws to the HIPAA privacy rules; state laws can supercede federal mandates only if they offer more protections.
3. Examine health plan contracts (HMO and standard plans) and agreements with local government employers to ensure compliance with the privacy rules is addressed; explore changes to the "It's Your Choice" booklet and employer manual to address the privacy standards.
4. Monitor future legislative and regulatory changes that are likely to occur to the privacy regulations. *[Exhibit B provides an excerpt from the 5/16/02 EBIA WEEKLY (Employee Benefit Institute of America) that identifies the Department of the Treasury Semiannual Regulatory Agenda on HIPAA issues].*

Summary and Conclusion

The workgroup determined that there are many more questions that need to be examined as to how ETF is affected by HIPAA privacy and EDI standards. In addition, there are more federal regulatory requirements that are anticipated in the future, such as security rules and potential changes to the privacy regulations. To accomplish a comprehensive review of the HIPAA requirements (legal as well as good public policy), resources for a project position or a contractor (consultant) are needed. This report is a good start, but there is much more work ahead to enable ETF to adequately evaluate and conform to the federal mandates of HIPAA.