

## Misdirected EOBs a HIPAA Violation

In the roughly 750 complaints that have been filed against group health plans, according to a U.S. Department of Health and Human Services privacy official, misdirected communications and inadequate separation between the employer and group health plan are the most common HIPAA privacy violations.

Explanation of Benefits (EOB) forms sometimes are sent to the wrong people. In one case, a programming change sent about 2,000 EOBs to the wrong individual. Other miscommunication problems include systems not updated to reflect a divorce and failure to abide by agreed-to confidential communications. One privacy policy specialist says “These can be very systemic problems.”

In the inadequate separation cases, the employer ends up with protected health information (PHI) either because there was some force by the employer to get this information, or just a lack of formality in observing HIPAA’s PHI firewalls.

Sometimes it is unclear whether such a violation is attributable to the group health plan itself or to the employer which is not covered by HIPAA. A privacy policy specialist with Health and Human Services (HHS) says “If the covered entity can take steps to correct what’s wrong, it’s fixed.” However, if the plan cannot and the business associate will not, terminating the business associate contract may be the only feasible solution. When handling a business associates’ privacy breaches, a very important

question needs to be asked, “Is this the only business associate that can provide that service?”

In a constantly changing health care system the continuing relevance and enforcement record of HIPAA has come under scrutiny. Some wonder if the privacy rule is not up to the task of dealing with health information technology, and the lax enforcement of the privacy rule is putting patient records at risk.

The facts, however, show that ongoing legislation and technology proposals build on HIPAA’s legal framework rather than discard it. Privacy is the key concern and is a hot topic. The U.S. Department of Health and Human Services Office of Civil Rights will prioritize privacy complaints that allege violation of individual rights, such as access to one’s own PHI.

### What This Means For Counties

As a result of these standards, it is strongly recommended that counties take steps to avoid inadvertent disclosures of PHI, which may include looking at their group health plan and its health information technology contract.

For more information, contact CTSI at 303-861-0507.