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## Misdirected EOBs are 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 (HHS) privacy official, misdirected communications and inadequate separation between the employer and group health plan are the most common HIPAA privacy violations.

### Misdirected Communications

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 stated, "These can be very systemic problems."

### Inadequate Separation

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 a lack of formality in observing HIPAA's Protected Health Information (PHI) firewalls.

### Finding the Problem

Sometimes it is unclear whether a violation is attributable to the group health plan itself or to the employer, which is not covered by HIPAA. According to a privacy policy specialist with HSS, "If the covered entity can take steps to correct what's wrong, it's fixed." However, if the health plan cannot and the business associate will not address the privacy violation, terminating the business associate contract may

be the only feasible solution. When handling a business associates' privacy breaches, an important question needs to be asked, "Is this the only business associate that can provide that service?" A business associate's ability to provide and maintain privacy protections needs to be an important consideration when signing or renewing a business agreement.

### HIPAA Enforcement

In a constantly changing health care system the continuing relevance and enforcement record of HIPAA has come under scrutiny. Some question if the privacy rule is up to the task of dealing with health information technology and if the lax enforcement of the privacy rule is putting patient records at risk. However ongoing legislation and technology proposals attempt to build on HIPAA's legal framework to safeguard privacy. The HSS Office of Civil Rights prioritizes privacy complaints that allege violation of individual rights, such as access to one's own PHI, so it is necessary to comply with HIPAA requirements to avoid legal complaints.

### 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. This may include looking at their group health plan and its health information technology contract. For more information, contact CTSI at 303-861-0507. 