

# HIPAA Privacy & Security Does it Apply to Your Plan?

- **IF:**

- Plan is self-funded with 50 or more employees eligible to participate; or
- Plan is self-funded with all plan administration functions handled by a TPA (even if there are less than 50 eligible employees)

- **THEN:**

- Privacy Rule applies; Plan Sponsor responsible for compliance
- Security Rule applies if PHI is electronic
- Plan Document and Firewall Requirements apply to Plan and Plan Sponsor

# HIPAA Privacy Rule

- Use and Disclosure Rules—PHI can be used
  - For covered functions (i.e., treatment, payment, or healthcare operations);
  - With respect to specific types of information to family members or close personal friends after the opportunity to agree or object;
  - As required or permitted under HIPAA’s public policy exceptions; and
  - Pursuant to an individual’s authorization
  
- Only minimum necessary to accomplish the intended purpose

# HIPAA Privacy Rule

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- Individual Rights & Privacy Notice
  - Privacy Notice
  - Right to access and amend PHI
  - Right to an account of disclosures of their PHI
  - Right to request restrictions on uses and disclosure of PHI
  - Right to request receipt of PHI at alternative locations

# HIPAA Privacy Rule

- Administrative Safeguards
  - Appointing a privacy official and contact person
  - Providing appropriate workforce training;
  - Implementing policies and procedures for use and disclosure of PHI;
  - Risk analysis and risk management
  - Preparing a notice of privacy practices; and
  - Drafting and executing business associate contracts.

# HIPAA Privacy Rule

- Technical and Physical Safeguards
  - Amending plan document to provide permitted uses and disclosures of PHI; if there is EPHI plan document must be amended for compliance with Security Rule
  - Plan Sponsor certifies to Plan that plan documents have been amended and firewall has been put in place
  - Locking the doors to rooms housing PHI, or file cabinets containing PHI, and limiting the members of the workforce who have keys or passcodes
  - Shredding documents containing PHI prior to disposal
  - Restricting access to work areas by visitors

# HITECH Breach

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- Notice Requirements relate to unauthorized use or disclosure of unsecured PHI
- Breach rule focuses on integrity of data rather than impact on individual
- Penalties and cost of providing notification can be significant

# Impact of United States v. Windsor

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- Plans must treat same-sex spouse as a spouse
- Must recognize marriage even if same-sex marriage not recognized in jurisdiction where couple lives
- Registered domestic partnerships or civil unions not treated as marriage
- Rules applicable June 26, 2013 (as of 4/4/2014)

# Impact of United States v. Windsor

- DOL Technical Release 2013-04 (9/18/2013)
  - Adopts same Rules as IRS to Group Health Plans
- Notice 2014-19 (4/4/2019)
  - Must comply with Windsor as of June 26, 2013
  - Can apply Windsor before June 26, 2013, but need to consider impact of doing same
  - Plan amendments to employee benefit plans must be adopted (if needed) by December 31, 2014



# Cafeteria Plan Changes

- “USE IT OR LOSE IT” CHANGES for Flexible Spending Accounts
  - \$500 Carryover from One Plan Year to Next
    - Can use for the entire plan year
    - Does not reduce the maximum salary deferral (\$2500 in 2014)
    - Forfeit any amount not used in prior year in excess of \$500
    - Can use with run-out period
    - Cannot combine with grace period
    - Plan must be amended to permit use of carryover by last day of 2014 plan year

# Cafeteria Plan Changes

- Impact of Rollover on Health Savings Account (“HSA”) Eligibility
  - Ineligible if rollover into General-Purpose Health FSA
  - Plan can be amended to permit rollover into HSA-Compatible FSA
  - Plan can be amended to automatically provide for rollover into HSA-Compatible FSA
  - If have runoff period, can apply unused amounts from prior year to runoff claims and then “roll” the balance into an HSA-Compatible FSA

# Cafeteria Plan Changes

- Carryover or Grace Period or Neither
  - What are employees expecting
  - If currently have grace period may want to wait one plan year before switching to carryover
  - How much of an administrative burden will it cause



# Cafeteria Plan Changes

## – Grace Period

- Cannot use with Carryover
- Entire unused amount can be used to pay expense incurred in first 2½ months of next plan year
- Any amount remaining after end of paying such expenses is forfeited
- Does not decrease maximum deferral permitted for Plan Year

# Cafeteria Plan Changes

- Optional Plan Amendment for non-calendar year plans
  - Exceptions to the change in status rules
  - Permit an employee to cease deferral to purchase policy on Exchange
  - Permit an employee to commence salary deferral in order to satisfy individual mandate
  - Available for 2013 Plan Year only
  - Do not have to make available for entire plan year
    - E.g. can limit new election period to January 2014
  - Amendments must be adopted by end of 2014 plan year