

## MAILING COBRA NOTICES

COBRA notices must be furnished to an employee as well as their spouse. Over the years there has been much discussion regarding the way the notices are provided to the spouse. Certified Mail has been determined in court cases to be an unacceptable practice as the Plan Administrator may not require the recipient to take any additional action to receive their notice, and the signature required for delivery of Certified Mail is considered an additional action. I have recommended mailing the notices first class mail with Delivery Confirmation. Delivery Confirmation service gives you the date, ZIP Code, and the time your article was delivered via the USPS online tracking and costs an additional \$0.50.

Another service, Certificate of Mailing, is now considered to be the best method to provide COBRA notices. The Certificate of Mailing service provides proof that you put the notice into the hands of the postal service. In order to receive a Certificate of Mailing, you must submit Form 3817 for individual first class letters, or Form 3877 for multiple first class letters, and pay \$0.95 additional per letter.

For your convenience, a copy of Form 3817 is included on page 2 of this newsletter.

## HIPAA SECURITY BREACHES

We have all heard about the VA employee's laptop which was stolen. The laptop contained Protected Health Information on many patients, and the VA was required to advise all the affected patients of the breach. Are you prepared if something similar happens to you?

Many group health plans will be obtaining quotes in the 4th quarter for January 1 renewals, and need to know what their obligations are regarding the data furnished to any agent, broker, or other party. A group health plan, as a covered entity, is required to take certain steps to protect the PHI of its plan participants. The most important of these steps is the Business Associate agreement. Before a group health plan is permitted to share any PHI with a third party, they must have in place a BA agreement. The BA Agreement is a contract with the agent/broker, in which the agent/broker is agreeing to protect the information just as the group health plan sponsor is required by HIPAA.

If the agent misplaces the data, or the data is stolen, the agent is required to notify each plan participant whose data was breached. The group health plan is required to investigate the matter and ensure the BA agreement was in place. If there was no BA agreement in place, this is a violation of HIPAA and the employee who furnished the data must be sanctioned per your HIPAA policies and procedures.

There is always a chance that one of the plan participants will file a complaint concerning the breach. As a result, it is very possible that the Office of Civil Rights will contact the group health plan sponsor to determine what occurred, and to review the group health plan's Business Associate agreements as well as the HIPAA policies and procedures.

*For more information on these topics, contact:*  
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