

**WHERE DOES YOUR HEALTH PLAN FIT IN HIPAA'S
PRIVACY REGULATION REQUIREMENTS?**

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Where Does Your Health Plan Fit in HIPAA's Privacy Regulation Requirements?

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The following chart attempts to summarize some of the types of plans. No one should rely on this as legal advice. In every situation, the application of the rules requires careful analysis of one's own counsel who is familiar with your particular situation. This only represents an interpretation at a single point in time under the guidance that existed at such time. This chart does not explore how the use of organized health care arrangements, affiliated entities or hybrid entities applies in any of the examples shown below.

Whether a benefit plan or program is subject to the Health Insurance Portability and Accountability Act's ("HIPAA's") privacy regulation requirements and the extent to which it is subject to the requirements depends on its benefits, funding, and administration. The HIPAA privacy regulations exclude plans with fewer than 50 participants that are self administered from the definition of a group health plan. The health plan definition excludes excepted benefits under HIPAA as defined by section 2791(c)(1) of the Public Health Service Act (see endnote 2 below). The group health plan definition under the privacy regulations looks to the definition of an employee welfare benefit plan under ERISA § 3(1) or under the Public Health Service Act's definition of a plan providing medical care at section 2791(a)(2) and 42 U.S.C. § 300gg-91(a)(2). One must determine: What is the plan? Does it file Form 5500s, how does it operate, what does its plan document reflect to determine if it is a group health plan and then is it one of the excepted benefit that is exempted from application of the privacy regulations or is it excluded under the less than 50 and self administered exception?

Description of Benefit Plan	Is it a Health Plan for Privacy?	Notice of Privacy Practice Requirements under Privacy	Privacy Administrative Compliance Requirements
Health FSA with fewer than 50 participants that is self administered	No ¹	N/A	N/A

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On Site Clinic	No, meets definition of excepted benefit under § 2791(c)(1) of Public Health Service Act	Not as a group health plan, but the health care providers will have privacy notice and administrative obligations.	The health care providers in the on site clinic will have privacy compliance requirements as health care providers.
Health FSA that is not an excepted benefit under § 2791(c)(1) of the Public Health Service Act and is self administered with more than 50 participants	Yes	<p>Yes, from the group health plan.</p> <p>The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.²</p>	<p>Yes, the plan is a health plan for privacy and because it is not fully insured, it must fully comply with the requirements for health plans under the privacy regulations.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce</p>

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			<p>against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.³</p>
FSA that has 50 or more participants or is not self administered	Yes. It is only not a health plan for purposes of the privacy regulations if it is an excepted benefit under section 2791(c)(1) of the Public Health Service Act	Yes, from the group health plan. ⁶ The notice must be provided to the plan's participants by the plan's compliance date for the individuals then	<p>Yes.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving</p>

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	<p>("PHSA")⁴ which is an extremely limited list of exclusions.⁵</p>	<p>covered and thereafter at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.⁷</p>	<p>complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding protected health information ("PHI") as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities</p>

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			<p>of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.⁸</p>
<p>Dental or Vision benefit that meets the excepted benefit definition under PHSA § 2791(c)(2) under HIPAA and is fully insured and it is fully insured and the plan only receives summary health information, information on who is participating or is enrolled or disenrolled</p>	<p>Yes⁹</p>	<p>Yes, however the notice should be provided by the HMO or insurer¹⁰</p>	<p>Yes, the plan must comply on a limited basis with some of the privacy administrative procedures due to the plan benefits being fully insured and only receiving summary health information. The plan must refrain from intimidating or retaliatory acts against an individual for exercising rights under privacy or for participation in process under privacy, for filing a complaint or testifying or opposing an act or practice in violation of privacy.¹¹</p> <p>May not require individual to waive his right to complain to Secretary of Health and Human Services.</p> <p>Must maintain documentation of plan, document amendment under 45 C.F.R. § 164.504(f), plan documents restrict use or disclosure of PHI by plan sponsor and may disclose SHI for purposes of obtaining premium bids, for providing group health plan coverage or to modify, amend or terminate the group health plan.¹²</p>

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<p>Dental or Vision fully insured benefit that meets the excepted benefit definition under HIPAA under § 2791(c)(2) of the PHSA,¹³ and the employer creates or receives protected health information in addition to summary health information or information on whether an individual is participating or is enrolled or disenrolled from the plan</p>	<p>Yes¹⁴</p>	<p>Yes, however the notice should be provided to the participant by the HMO or insurer.¹⁵</p> <p>Since the plan receives PHI in excess of SHI and enrollment information, the employer must also maintain a notice of privacy policies <u>and</u> provide the notice on request to any person.¹⁶</p> <p>However, the employer is not required to distribute the notice of privacy practices.</p>	<p>Yes, since the plan benefits are fully insured and the plan receives PHI, the plan only must comply fully with some of the privacy administrative procedures.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding protected health information ("PHI") as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p>

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			<p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.¹⁷</p>
Dental or Vision benefit that meets the excepted benefit definition under HIPAA under § 2791(c)(2) of the PHSA and is self insured	Yes ¹⁸	<p>Yes, the plan must maintain a notice and provide it upon request.¹⁹</p> <p>The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision</p>	<p>Yes, because the plan is self insured, it must fully comply with the requirements for a health plan.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures</p>

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		<p>to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.²⁰</p>	<p>regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially</p>

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			<p>effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.²¹</p>
Fully insured health plan or HMO and employer creates or receives only summary health information or information on whether individual enrolled or disenrolled or is participating; or only receives de-identified information or no health information	Yes	<p>Plan does not have to maintain privacy practices notice.²²</p> <p>Insurer should maintain the notice.²³</p>	<p>Yes, the plan has limited requirements under the privacy regulations because it is fully insured and the employer only receives summary health information or enrollment information. The plan must refrain from intimidating or retaliatory acts against an individual for exercising rights under privacy or for participation in process under privacy, for filing a complaint or testifying or opposing an act or practice in violation of privacy.²⁴</p> <p>May not require individual to waive his right to complain to Secretary of Health and Human Services.</p> <p>Must maintain documentation of plan, document amendment under 45 C.F.R. § 164.504(f), plan documents restrict use or disclosure of PHI by plan sponsor and may disclose SHI for purposes of obtaining premium bids, for providing group health plan coverage or to modify, amend or terminate the group health plan.²⁵</p>
Fully insured health plan and employer creates or receives protected health information	Yes	Yes, however because the plan creates or receives PHI beyond SHI and information on who is participating, enrolled or disenrolled, the plan must maintain a privacy practices notice and provide such notice upon request to any	<p>Yes, the plan is a health plan and must comply fully with the privacy requirements because it receives protected health information.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p>

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		<p>person.²⁶</p> <p>The insurer would still have an obligation to provide the notice.²⁷</p>	<p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change</p>

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			<p>effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.²⁸</p>
Self insured health plan and TPA is Fiduciary and decides all claims and employer creates or receives only de-identified health information	Yes	Yes. The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it	<p>Yes, the plan still must receive protected health information to process the claims and thus it must fully comply with the privacy administrative requirements.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p>

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		<p>provides the notice that applies to the individual or other person requesting the notice.²⁹</p>	<p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with</p>

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			<p>respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.³⁰</p>
<p>Self insured health plan and TPA is Fiduciary and decides all claims and plan creates or receives only summary health information or plan creates or receives protected health information</p>	<p>Yes</p>	<p>Yes. The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.³¹</p>	<p>Yes, the plan must fully comply with the privacy administrative requirements for health plans because the plan receives PHI through its TPA, a business associate.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce</p>

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			<p>against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.³²</p>
Self insured health plan and employer's benefits administration committee decides all claims and plan creates or receives protected health information or	Yes	Yes. The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new	<p>Yes, the self insured health plan must comply with all privacy administrative requirements for health plans because it is self insured.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p>

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<p>employer is plan administrator and decides claims</p>		<p>enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.³³</p>	<p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The</p>

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			<p>policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.³⁴</p>
<p>Wrap around welfare benefit plan, including self-insured health plan and other insured benefits such as HMO coverage and life and disability and plan creates or receives protected health information</p>	<p>Yes, as to all benefits in the wrap around plan. The privacy regulations look to the definition of an employee welfare benefit plan under section 3(1) of the Employee Retirement Income Security Act of 1974, as amended.³⁵ However, the plan could be a hybrid entity and designate the portions of the wrap around plan that are health plans as health care components.³⁶ Only the health care components would be required to comply with the standards and requirements in the privacy regulations.³⁷</p>	<p>Yes. The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named</p>	<p>Yes, and all welfare benefits are in the plan subject to the full privacy administrative requirements. Thus the privacy regulations apply to all benefits within the plan because the group health plan is defined as the employee welfare benefit plan as defined in section 3(1) of ERISA and its benefits are not provided solely through insurance or HMO contracts.⁴⁰ However, it is still not clear if PHI may be used for any other benefit or benefit plan after it is disclosed to the plan sponsor.⁴¹</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than</p>

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		<p>insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.³⁸</p> <p>If the plan has more than one privacy notice, it must provide the relevant notice to the individual.³⁹</p>	<p>the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or</p>

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			<p>procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.⁴²</p>
<p>Wrap around welfare benefit plan, including self insured health plan and other self insured benefits such as dental, disability and life benefits and plan creates or receives PHI</p>	<p>Yes, as to all benefits covered by wrap around plan. The privacy regulations look to the definition of an employee welfare benefit plan under section 3(1) of the Employee Retirement Income Security Act of 1974, as amended.⁴³</p>	<p>Yes. The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.⁴⁴</p>	<p>Yes, and all components are covered and must comply with full privacy administrative requirements. Thus the privacy regulations apply to all benefits within the plan because the group health plan is defined as the employee welfare benefit plan as defined in section 3(1) of ERISA.⁴⁶ However, it is still not clear if PHI may be used by any other benefit within the welfare benefit plan if it is not disclosed to the plan sponsor.⁴⁷</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding PHI as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's</p>

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		<p>If the plan has more than one privacy notice, it must provide the relevant notice to the individual.⁴⁵</p>	<p>privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p>

Description of Benefit Plan	Is it a Health Plan for Privacy?	Notice of Privacy Practice Requirements under Privacy	Privacy Administrative Compliance Requirements
			(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect. ⁴⁸
<p>Non-subscriber to worker's compensation self insured plan maintained by non-governmental or non-church entity. Texas has non-subscriber ERISA plans providing alternative benefits to worker's compensation. The non-subscriber self-insured worker's compensation differs from self-insured under the worker's compensation statute which is still worker's compensation and thus an excepted benefit under § 2791(c)(1) of the Public Health Service Act.</p>	<p>Since it is not worker's compensation insurance or similar insurance, it is not an excepted benefit under § 2791(c)(1)(D) of the Public Health Service Act. Since it is not an excepted benefit as defined under § 2791(c)(1) of the Public Health Service Act and it is an employee welfare benefit plan under § 3(1) of ERISA that provides health benefits, it satisfies the definition of a group health plan for the privacy regulations. Since it is a substitute to worker's compensation insurance that provides health care benefits, it is an ERISA health plan for purposes of the privacy regulations and is subject to privacy.⁴⁹</p>	<p>Yes, from the group health plan.⁵⁰ The notice must be provided to the plan's participants by the plan's compliance date for the individuals then covered and thereafter at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it provides the notice that applies to the individual or other person requesting the notice.⁵¹</p>	<p>Yes, the plan must fully comply with the privacy administrative requirements because it is not an excepted benefit since it is not worker's compensation insurance or similar insurance and thus it is not an excepted benefit for privacy. Since the plan is self insured, it must fully comply with the privacy administrative requirements and notice requirements.</p> <p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding protected health information ("PHI") as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce</p>

Description of Benefit Plan	Is it a Health Plan for Privacy?	Notice of Privacy Practice Requirements under Privacy	Privacy Administrative Compliance Requirements
			<p>against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment, payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.⁵²</p>
Worker's Compensation Insurance	No, workers' compensation insurance is exempted as an excepted benefit. ⁵³	No	No
Non-subscriber workers' compensation benefit plan	Yes, since it is not workers' compensation or similar	Yes, a health plan for privacy includes any	Yes, a health plan for privacy includes any other individual or group plan that pays for the cost of medical care. ⁵⁹

Description of Benefit Plan	Is it a Health Plan for Privacy?	Notice of Privacy Practice Requirements under Privacy	Privacy Administrative Compliance Requirements
<p>maintained by governmental entity or church that is self-insured</p>	<p>insurance, it is not an excepted benefit under § 2791(c)(1) of the Public Health Service Act. Since it is not an excepted benefit under § 2791(c)(1) and it is a plan that provides for payment of medical benefits, it is a health plan for privacy because the health plan definition in the regulations includes any other individual or group plan that pays for the cost of medical care for individuals. Only workers' compensation insurance or similar insurance is an excepted benefit under section 2791(c)(1) of the Public Health Service Act and 45 C.F.R. § 160.103 (2000).⁵⁴</p>	<p>other individual or group plan that pays for the cost of medical care.⁵⁵</p> <p>Yes, from the group health plan.⁵⁶ The notice must be provided to the plan's participants by the plan's compliance date for the individuals then covered and thereafter at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons.</p> <p>The plan must provide the notice by the compliance date to individuals covered by the plan; thereafter, at enrollment to new enrollees; within 60 days of any material revision to the notice to the individuals covered at such time; at least once every three years plus must notify all persons covered of the availability of the notice and how to obtain it. The notice requirement is satisfied if it is provided to the named insured (participant). If the plan has more than one notice, it satisfies the requirements if it</p>	<p>(a) (1) The plan must designate a privacy official responsible for the development and implementation of the privacy policies and procedures for the plan.</p> <p>(2) The plan must designate a contact person or office who is responsible for receiving complaints on privacy and who is able to provide further information about the plan's privacy notice.</p> <p>(3) The plan must document the personnel designations in (a)(2).</p> <p>(b) The plan must train all members of the work force on the privacy policies and procedures regarding protected health information ("PHI") as is necessary and appropriate for the work force members to carry out their functions. This training must be provided to each member of the plan's work force no later than the compliance date for the plan, and thereafter to each new member within a reasonable period after the person joins the plan's work force, and to each member of the plan's work force whose functions are affected by a material change in the policies or procedures. This training must be documented.</p> <p>(c) The plan must have in place appropriate administrative, technical and physical safeguards to protect the privacy of PHI from any intentional or unintentional disclosure or use in violation of the privacy regulations.</p> <p>(d) The plan must provide a process for individuals to make complaints regarding the plan's privacy policies and procedures or its compliance with the same and must document all complaints received and their disposition, if any.</p> <p>(e) The plan must have and apply appropriate sanctions against work force members who fail to comply with the privacy policies and procedures, except not with respect to persons who file complaints. The plan must document the sanctions it applies, if any.</p> <p>(f) The plan must mitigate, to the extent practicable, any harmful effect that it knows from a use or disclosure of PHI in violation of the policies or the regulations.</p> <p>(g) The plan must refrain from intimidating or retaliatory acts or acts that threaten or coerce against (1) an individual who exercises any right under the privacy regulations or who participates in any process established by the privacy regulations, or (2) an individual or other for filing a complaint with the Secretary of HHS, for testifying, assisting or participating in an investigation, compliance review proceeding or hearing or for opposing any act or practice that violates the privacy regulation provided the person has a good faith belief the practice is unlawful and the manner of the opposition is reasonable and does not involve disclosure of PHI.</p> <p>(h) A plan may not require individuals to waive their rights to file a complaint with the Secretary of HHS or under the privacy regulations as a condition of providing any treatment,</p>

Description of Benefit Plan	Is it a Health Plan for Privacy?	Notice of Privacy Practice Requirements under Privacy	Privacy Administrative Compliance Requirements
		<p>provides the notice that applies to the individual or other person requesting the notice.⁵⁷</p> <p>If the plan has more than one privacy notice, it must provide the relevant notice to the individual.⁵⁸</p>	<p>payment, or enrollment in the health plan or eligibility for benefits.</p> <p>(i) A plan must implement privacy policies and procedures designed to comply with the privacy regulation's standards, implementation specifications and other requirements. The policies and procedures must be reasonably designed considering the size and type of activities of the plan that relate to PHI to ensure compliance. A plan must change its policies or procedures as necessary to comply with the law, including the regulation's requirements. When a plan changes its policy or a practice included in its notice, it may only make the change effective with request to PHI received before the effective date of its privacy notice revision if it included the statement reserving its right to make such change in its privacy practices or it may make a change, provided the change is documented and implemented if it does not materially effect the content of the notice and before the effective date it is documented under 45 C.F.R. § 164.530(j). If there is a change in the law that necessitates a change in the plan's policies or procedures, the plan must promptly document and implement the revised policy and if the notice is changed, the plan must revise the notice. The plan may not implement a change in the policy or procedure with and documenting the revised policy or procedure, revising the notice and making it available as required by 45 C.F.R. § 164.520(c). If a covered entity does not reserve the right to change a privacy policy or procedure that is stated in the notice, the plan is bound by the privacy practices stated in the notice with respect to PHI created or received while such notice is in effect, and it may change the practices if the change meets the implementation requirements of 45 C.F.R. § 164.530(i)(4)(i)(A) to (L) and the change is effective only with respect to PHI created or received after the effective date of the notice.</p> <p>(j) The plan must maintain policies and procedures for privacy in writing or in an electronic form and if communication is required it must be maintained in writing or in an electronic form and if an action, activity or designation is required, the plan must maintain a written or electronic record of the same for six (6) years from the date it was created or last in effect.⁶⁰</p>

Endnotes

¹ 45 C.F.R. § 160.103 (2000) (group health plan definition).

² 45 C.F.R. § 164.520(c)(1) (2000).

³ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

⁴ 45 C.F.R. § 160.103 (2000).

⁵ Only the following benefits are excepted benefits for purposes of the privacy regulations: medical coverage under automobile insurance, coverage for accident or disability income insurance or any combination thereof, coverage that is a supplement to liability insurance, liability insurance, including general liability and automobile liability, workers' compensation or similar insurance, credit only insurance, coverage for on-site medical clinics, other similar insurance coverage specified in the

regulations under which benefits for medical care are secondary or incidental to other insurance benefits (section 2791(c)(1) of the Public Health Service Act, as amended).

⁶ 45 C.F.R. § 164.520(a)(2)(i)(A) (2000).

⁷ 45 C.F.R. § 164.520(c)(1) (2000).

⁸ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

⁹ 45 C.F.R. § 160.103 (2000) (health plan definition).

¹⁰ 45 C.F.R. § 164.520(a)(2)(i)(B) (2000).

¹¹ 45 C.F.R. § 164.530(a), (g), (h) and (k) (2000).

¹² 45 C.F.R. § 164.530(a), (g), (h) and (k) (2000).

¹³ The definition of this type of excepted benefit is under § 2791(c)(2) of the Public Health Service Act and only those under § 2791(c)(1) are excepted from the privacy requirements.

¹⁴ 45 C.F.R. § 160.103 (2000) (health plan definition).

¹⁵ 45 C.F.R. § 164.520(a)(2)(i)(B) (2000).

¹⁶ 45 C.F.R. § 164.520(a)(2)(ii) (2000).

¹⁷ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

¹⁸ 45 C.F.R. § 160.103 (2000).

¹⁹ 45 C.F.R. § 164.520(a)(2)(i)(A) (2000).

²⁰ 45 C.F.R. § 164.520(c)(1) (2000).

²¹ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

²² 45 C.F.R. § 164.520(a)(2)(iii) (2000).

²³ 45 C.F.R. § 164.520 (2000).

²⁴ 45 C.F.R. § 164.530(a), (g), (h) and (k) (2000).

²⁵ 45 C.F.R. § 164.530(a), (g), (h) and (k) (2000).

²⁶ 45 C.F.R. § 164.520(a)(2)(ii) (2000).

²⁷ 45 C.F.R. § 164.520(a)(2)(B) (2002).

²⁸ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

²⁹ 45 C.F.R. § 164.520(c)(1) (2000).

³⁰ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

³¹ 45 C.F.R. § 164.520(c)(1) (2000).

³² 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

³³ 45 C.F.R. § 164.520(c)(1) (2000).

³⁴ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.

³⁵ 45 C.F.R. § 160.103 (2000). See the group health plan and health plan definitions.

³⁶ 45 C.F.R. § 164.504 (2000).

³⁷ 45 C.F.R. § 164.504(g) (2000).

³⁸ 45 C.F.R. § 164.520(c)(1) (2000).

³⁹ 45 C.F.R. § 164.520(c)(1)(iv) (2000).

⁴⁰ 45 C.F.R. § 160.103 (2000).

⁴¹ 45 C.F.R. § 164.504(f)(2)(ii) (2002) restricts the plan sponsor from using PHI disclosed to it for any other benefit or benefit plan, but it does not state that the plan cannot use PHI for any other benefit.

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- ⁴² 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.
- ⁴³ 45 C.F.R. § 160.103 (2000). See the group health plan and health plan definitions.
- ⁴⁴ 45 C.F.R. § 164.520(c)(1) (2000).
- ⁴⁵ 45 C.F.R. § 164.520(c)(1)(iv) (2000).
- ⁴⁶ 45 C.F.R. § 160.103 (2000).
- ⁴⁷ 45 C.F.R. § 164.504(f)(2)(ii) (2002) restricts the plan sponsor from using PHI disclosed to it for any other benefit or benefit plan, but it does not state that the plan cannot use PHI for any other benefit.
- ⁴⁸ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.
- ⁴⁹ 45 C.F.R. § 160.102 (2000) and § 2791(c)(1)(D) of the Public Health Service Act.
- ⁵⁰ 45 C.F.R. § 164.520(a)(2)(i)(A) (2000).
- ⁵¹ 45 C.F.R. § 164.520(c)(1) (2000).
- ⁵² 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.
- ⁵³ 45 C.F.R. § 160.102 (2000) and § 2791(c)(1)(D) of the Public Health Services Act.
- ⁵⁴ 45 C.F.R. § 160.103 (2000).
- ⁵⁵ 45 C.F.R. § 160.103 (2000).
- ⁵⁶ 45 C.F.R. § 164.520(a)(2)(i)(A) (2000).
- ⁵⁷ 45 C.F.R. § 164.520(c)(1) (2000).
- ⁵⁸ 45 C.F.R. § 164.520(c)(1)(iv) (2000).
- ⁵⁹ 45 C.F.R. § 160.103 (2000).
- ⁶⁰ 45 C.F.R. § 164.530 (2000). See 45 C.F.R. § 164.530(k) regarding which plans can be exempted from some of the requirements above.