Arkansas
Insurance Department

THE IMPACT OF ARKANSAS' HIPAA ON THE SMALL EMPLOYER

(ACT 997 OF 1997)

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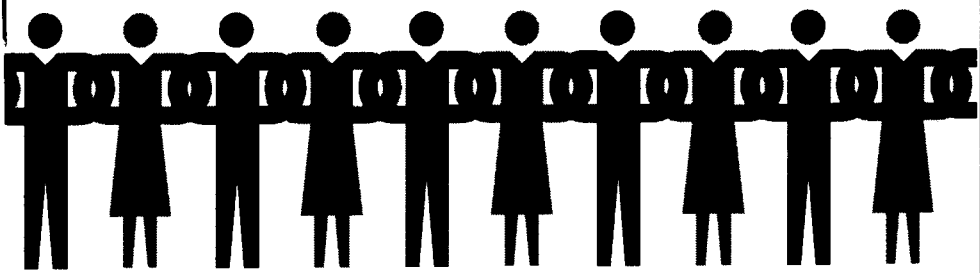

A Message from the State Insurance Commissioner:

I strongly believe part of our job here at the Arkansas Insurance Department is to help educate consumers and members of the insurance industry concerning the requirements of the law. Since I became Commissioner on January 15, 1997, I have made it a top priority of my administration to ensure, as much as is humanly possible, that this Department improves its communication with Arkansas insurance consumers, agents, and companies. My staff has provided me a great deal of expertise and assistance in this regard, and I truly am thankful to them for their hard work.

Toward that end, this pamphlet is designed to provide an overview of recent changes in the law that will affect the health benefits of all Arkansans. The issues addressed in this pamphlet concern changes made by the federal Health Insurance Portability and Accountability Act of 1996, the Newborns' and Mothers' Health Protection Act of 1996 and the Mental Health Parity Act of 1996, all of which have been enacted into law here in Arkansas.

On April 1, 1997, the Departments of Labor, Health and Human Services and the Treasury issued interim regulations that interpret many of the provisions of the new laws. The Department of Labor's regulations interpret amendments made to the Employee Retirement Income Security Act ("ERISA"). Their interpretation may change in the future, also additional regulations are expected. Therefore, the following information could change. However, it provides guidance on how the Arkansas Insurance Department intends to enforce the Arkansas HIPAA.

It is important for readers of the pamphlet to understand that it may not address your specific health care questions. If you have additional questions, please contact the Arkansas Insurance Department at 1-800-852-5494 or the federal Department of Labor Pension and Welfare Benefits Administration, Division of Technical Assistance and Inquiries located in Washington, D.C. at 1-800-998-7542.

Our sincere hope here at the Department is that this pamphlet will help educate workers and their families about their rights under the law. It also is our intent to assist employers who sponsor group health plans in understanding their obligations under the new law.

We here at the Arkansas Insurance Department are working hard to help all Arkansans who desire health care coverage to obtain it at a reasonable cost. If we may be of any assistance to you in the area of health insurance or with any of your insurance needs, please do not hesitate to give us a call. Best personal regards.

Very truly yours,

Mike Pickens

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SUMMARY DESCRIPTION OF ACT 997 (ARKANSAS' HIPAA)

- ***What it does not do:***

  - *Does not mandate insurance.*
  - *Does not mandate the level of benefits.*
  - *Does not mandate the level of premiums.*

- ***Portability***

  This is to combat "job lock".

  It applies to groups of 2 and larger.

  It means that if you have group coverage, you are guaranteed health coverage for life as long as you can pay the premiums.

  It does not apply to changes from individual to individual.

  It limits preexisting conditions to a 6 month look back and a 12 month look forward (18 months if you are a late enrollee).

  The preexisting clause cannot be applied to certain categories of people: pregnancy, newborns, newly adopted.

  Credit against the preexisting clause can be gained by having prior creditable coverage of up to 12 months with no break in coverage of over 63 days.

- ***Guaranteed Renewability***

  This applies to insurance carriers.

  Your coverage is guaranteed renewable for life if you are an individual, and for as long as your employer wants to keep the coverage if it is a group employer case with only the following exceptions:

1. The carrier can nonrenew the product if you do not pay premiums.

2. The carrier can nonrenew the product for fraud.

3. The carrier can terminate an entire market (for example all small group business in the State of Arkansas), but then the carrier cannot write in that market for 5 years.

- ***Guaranteed Issue***

1. Each health insurer selling in the small group market (2 to 50 employees) must accept every small employer, including every eligible individual.

2. The carrier must make available to each small employer every product that is available to any other small employer, which includes deductibles and amount limits.

3. The carrier may vary participation requirements and employer contribution by size of the group, but not based on health status.

4. If an individual joins a group that has insurance, and the individual is an eligible employee, then that insurance is guaranteed issue to that individual, but preexisting clauses could be imposed up to 12 months unless there is creditable coverage.

- ***Miscellaneous***

1. The HIPAA law and the accompanying regulations are hundreds of pages -- this is just a brief summary.

2. HIPAA provides for certain maternity benefits (48-hour hospital stay after a normal birth and a 96-hour hospital stay after a caesarian birth) which, unfortunately, primarily raise costs.

3. Mental health parity requiring amount limits to be the same for mental health care as for medical/surgical benefits. This does not have to be included if the costs are shown to exceed 1 percent. In

the State of Arkansas in virtually all cases, the cost will be more than provided for in the Bill. Insurance companies can still include the benefit, but again the problem is cost.

4. Medical care savings accounts were provided in the Bill on a test basis. This provides that the policyholder gets a high deductible policy and the premium savings are put in a tax preferred account for the individual to control and use in the purchase of healthcare benefits below the deductible amount. It puts health care cost control in the hands of the consumer and purchaser of the health care benefit. This is the most positive aspect of the Bill outside of the limitations imposed by Congress.

IMPACT OF ARKANSAS' HIPAA ON THE INDIVIDUAL

◆ ***Requirements Prior to an Employer's First Plan Anniversary on or After July 1, 1997:***

On or after June 1, 1997, the employer or the insurance carrier must provide terminating employees with certificates of coverage.

◆ ***Requirements on or after an employer's first plan anniversary on or after July 1, 1997:***

1. Current employees who are eligible (for example, not part time employees) on this new first plan anniversary.

   a. Anyone currently covered that is subject to a preexisting clause can now only have that clause applied for a maximum of 12 months from the time they were first covered. So, if your employer's plan has already covered the employee for 12 months, the employee would no longer be subject to any pre-existing clause.

   b. If an eligible employee was declined, they can now reapply and will be covered subject only to a preexisting condition clause of 12 months, less credit for up to 12 months of any prior coverage that did not have a 63-day break.

c. Any employee who declined coverage because they had coverage elsewhere (for example, a dependent on a spouse's policy) can voluntarily drop that coverage and now be covered. They would be subject to a 12-month preexisting clause, less the amount of time they were covered by any other insurance, as shown by a certificate of coverage from the appropriate carrier(s) and/or employer(s).

d. Anyone who simply declined coverage (not because they had other coverage) may now apply if, in fact, the employer accepts late enrollees. If an employer accepts late enrollees, they can take the employee subject to the 18-month preexisting clause application applicable to late enrollees. This can even apply as a waiting period, which would count against the preexisting condition clause, during which period the employee would pay no premiums but have no coverage. The employee then would have full coverage with no preexisting condition clause applied at the end of the 18-month waiting period/preexisting period.

2. New eligible employees hired after an employer's plan anniversary that occurs on or after July 1, 1997.

a. The employer must cover all eligible employees.

b. The maximum preexisting clause that can be applied is for 12 months, less any creditable coverage.

c. The employer may impose a waiting period (it must be the same for all new employees) during which time the employee will have no coverage, but the waiting period is not considered a break in coverage and will count as credit against the preexisting condition clause.

d. Each individual is guaranteed renewable. That means that neither the employer nor the insurance carrier can nonrenew a given individual solely for health reasons, or any other reason, unless they are no longer an eligible employee (for example,

e. There can be no difference in rates for individuals based solely on health status. All members of the group may be charged higher rates because of the overall health status of the entire group.

f. An insurance carrier may still require reasonable medical information on employees that are to be covered, in order that the carrier may set an appropriate overall group rate.

3. What the group insurance carrier must do.

The policy is guaranteed renewable as long as you meet:

- ☑ any employee size requirements;
- ☑ the minimum participation requirements;
- ☑ the minimum percentage contribution required of the employer;
- ☑ pay the premiums; and
- ☑ no fraud was committed in the obtaining of the group policy.

Still, an insurance carrier can nonrenew the policy if, in fact, they nonrenew all the policies they have in the State of Arkansas in that market (small group, large group, individual, association). That is, they leave the entire market, and they leave it for a period of 5 years.

◆ ***The impact of some of these requirements:***

1. Preexisting condition clause — This is the maximum period, which is 12 months (18 months for a late enrollee), that coverage can be excluded for any illness or accident that occurred before the enrollment date. Anything that occurred after that date would be covered once coverage began. To determine if an illness/accident is preexisting, the insurer can look at only the 6 months prior to the enrollment date to see if the individual received any treatment or diagnosis for such illness/accident.

2. If the employer's coverage terminates, or an individual changes employers and there is no insurance (or no insurance for previously covered dependents) or an individual just quits working, then

the State risk pool (CHIPS) may be the only option. All other possibilities of coverage must be exhausted (e.g. COBRA, continuation of small group coverage, Medicaid) and the individual must have 18 months of continuous group coverage (no break in coverage of 63 days or more). Note that CHIPS is available to anyone who cannot get other coverage, but there is a 6-month preexisting condition clause for anyone not meeting the above requirement.

SUBJECT

Arkansas Act 997 of 1997, the Arkansas Health Insurance Portability and Accountability Act of 1997, codified as new Arkansas Code Ann. ("ACA") § 23-86-301, et seq.

PURPOSE

This bulletin is to provide a summary about the new Arkansas companion law to the Federal Health Insurance Portability and Accountability Act of 1996 (also know as HIPAA, Kennedy-Kassenbaum, KK). The full text of Act 997 of 1997 may be obtained from the Arkansas Secretary of State, State Capitol Building, State Capitol Grounds, Little Rock, AR 72201 or 501-682-1010.

RELATED LAWS

1. Arkansas Act 292 of 1997, which is the 1997 update of the Arkansas Comprehensive Health Insurance Pool Act (CHIPS). This provides that the state risk pool is the Arkansas individual alternative mechanism for those losing group coverage with no other alternative. See ACA §§ 23-79-501, et seq., as amended.

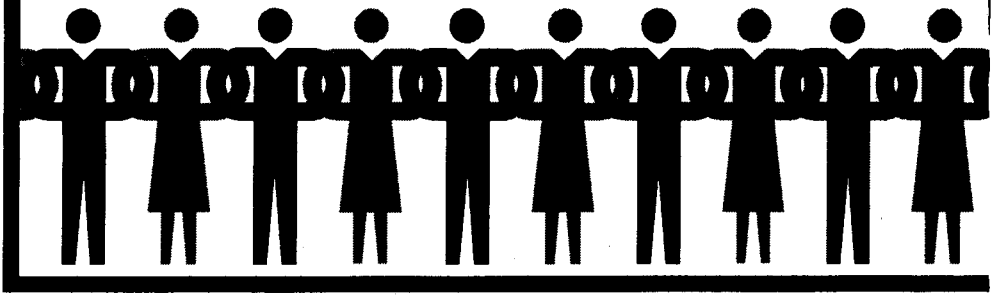
2. Arkansas Act 517 of 1997, the update of the Arkansas long term care laws to conform ACA § 23-96-101 et seq. to HIPAA, particularly regarding qualified products for tax deductibility of premiums.

3. Arkansas Act 1000 of 1997, the Department's Omnibus Act:

   A. Section 17 amends Arkansas law and cash fund exemptions as to new CHIPS act and others.

   B. Sections 18 through 23 conform the Arkansas Small Employers Group Health Act, ACA § 23-86-201 et seq., to HIPAA. The small group size of 1 to 25 was retained for rating purposes only.

   C. Sections 24 and 25 provide later amendments to Act 292 of 1997, the new CHIPS Act.

For more information contact:

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