

## April Brings Privacy Rules

By Matthew Flamm

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Harry Loeshelle is prepared for April 14. That's the date that privacy requirements under the Health Insurance Portability and Accountability Act go into effect for companies that pay \$5 million or more in annual medical claims or insurance premiums.

For the past two months, Mr. Loeshelle, director of compensation and benefits at Manhattan-based real estate firm Cushman & Wakefield Inc., has been working with his team to ensure that everyone knows what is meant by "protected health information," and the correct procedures for dealing with it.

He has also been telling people to stop using speakerphones.

"There are simple things you have to educate your staff on, like you can't use the speakerphone for any PHI-related discussion," Mr. Loeshelle says. "We're getting headphones."

Across New York, as companies move toward compliance, all sorts of routine practices are being reconsidered. Under the law, employers and health providers must safeguard employees' PHI, which is any information that relates to their "past, present or future physical or mental health," as well as to payments for their care.

Employers must develop policies for keeping relevant material confidential, document their policies and train all concerned to follow them. This includes appointing a privacy officer to oversee implementation. Companies with less than \$5 million in premiums or claims have another year to comply.

### Paying a Price

Failure to comply with the privacy rule can result in a civil penalty of up to \$25,000, and a criminal penalty of up to 10 years' imprisonment and a \$250,000 fine if the violation was intentional.

While some of the changes may be simple, overall compliance is a big task. "You can't start training until you've implemented policies and procedures, and everything has to be documented, including the fact that people

have been trained," says Andrew Blustein, a partner at Great Neck, L.I.-based law firm Garfunkel Wild & Travis.

The firm provides clients with models of the more than 20 different policies required under the privacy rule, as well as the agreements that businesses have to make with their outside vendors to ensure that they are in compliance as well. "It's not something you can start the day before," says Mr. Blustein.

Coming into compliance has taken many companies the better part of the past year. But once business operations and legal and technological issues are addressed, the procedures themselves are largely a matter of common sense.

"Move the computer so that people can't read the monitor, know where the fax machines are, put in cabinets with locks on them, and get a good shredder," advises Raj Goel, chief technology officer at Brainlink International Inc., a Manhattan-based consulting firm. "You just have to specify what the policy is, and enforce it."

### Easier said than done

Specifying and enforcing can be easier said than done. Linda Malek, partner and chair of the health care practice at Manhattan law firm Moses & Singer, says that many non-health care businesses may not understand the need for privacy. "These organizations aren't oriented around dealing with patient information," Ms. Malek says.

Her solution was to go into her clients' workplaces to see "how they're operating now and what they need to do," she says. Her firm also put together templates of HIPAA policies and forms, which clients could then tailor to their own organizations. "From the executive level on down, everyone has to buy in," Ms. Malek says. "It involves a change in the culture."

It also involves changes in long-accepted practices that might not seem, at first, to compromise PHI. For instance, Cushman & Wakefield used to receive detailed banking reports from the outside vendor that reimbursed employees

covered under the company's insurance plan. "In the future, we can't get that information," says Mr. Loeshelle. "We need to reconcile the numbers, but we can't know who the check was made out to or what it was for."

Collective bargaining may never be the same again, either. According to Bob Eicher, a principal at Towers Perrin, a benefits consulting firm in Manhattan, claims information has often been used in union negotiations to argue points about health care costs. But from now on, he says "claims information will have to be sanitized before it's used, and if the group isn't large enough, it can't be shared at all."

## SIMPLE STEPS TO COMPLIANCE

- USE HEADPHONES, NOT SPEAKER PHONES
- LOCK FILING CABINETS
- USE A PAPER SHREDDER
- PLACE COMPUTER MONITORS AND FAX MACHINES OUT OF PUBLIC VIEW