47th ANNUAL LAWYERS CONFERENCE

You Want How Much Member Information for What? Really?

Privacy and the Deficit Reduction Act of 2005

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BlueCross BlueShield Association

Blue Cross Blue Shield Association is an association of independent Blue Cross and Blue Shield companies.

The request . . .

Third Party Liability data match for Medicaid program multiple States

Identify appropriate staff

Schedule kick-off meeting

Review Tool Kit

Data Use Agreement

Disclosure is mandated

- “Federal legislation . . . mandates this process”
- “States are required . . . to identify other sources of health coverage”
- “Medicaid MCOs must abide by the same mandates imposed on states to identify other sources of health coverage”

Memo from CMS

- DRA "provides tools to strengthen States' ability to identify and collect payments"
- HHS is "to specify the manner in which State Medicaid agencies [obtain] eligibility and coverage data"
- Transaction "formats will serve as a tool to enable States to comply with DRA data exchange requirements"

FAQs from CMS

Does submission of full eligibility file violate HIPAA?

- No. The disclosure and use, pursuant to State law, does not violate HIPAA. *See link*.

Should States request data from other States?

- Yes. There is a significant amount of third party coverage derived from health plans in different States.

The Data Use Agreement

Identify members and dependents

- Currently covered
- Covered in last 36 months

Send file “minimum” of every month

For purposes of third party liability

- Identification
- Verification and
- Recovery efforts

Data Request:

- **Membership in 45 States plus D.C.**
- **57 fields, including:**
  - ➢ Group name
  - ➢ Group size
  - ➢ Product type
  - ➢ ASO/Insured
  - ➢ Phone number for employer or group contact

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Requested Data Fields for Carrier Implementation TPL			
MEMBER ROSTER FILE			
FIELD #	INGENIX FIELD NAME	DESCRIPTION	LEVEL
1	DateSort	Last date of member update	Red
2	MemberNumber	Member's unique identifier. No other member can be assigned this number at any point.	Red
3	RelationtoInsured	Member's relationship to the subscriber. Self, if same.	Red
4	SubscriberNumber	Member number for the subscriber of the plan. Same as the member's number if the subscriber is self.	Red
5	AlternateID	Member's HIPAA compliant identifier or alternate ID.	Red
6	NameFirst	Member's first name	Red
7	NameLast	Member's last name	Red
8	NameMiddle	Member's middle name	Green
9	DOB	Member's date of birth	Red
10	SSN	Member's social security number	Red
11	Gender	Member's sex	Green
12	Address1	Member's address (street)	Red
13	Address2	Member's address 2 (street)	Yellow
14	Address3	Member's address 3 (street)	Green
15	City	Member's city	Red
16	State	Member's state	Red
17	Zip	Member's zip code	Red
18	MaritalStatus	Member's marital status	Yellow
19	PhoneMain	Member's home telephone number	Red
20	PhoneAlternate	Member's work number	Yellow
21	PhoneWork	Member's cell phone number	Yellow
22	CommercialCoverageInd	Indicates if known other commercial coverage exists	Green
23	GovtCoverageInd	Indicates if known government coverage exists	Yellow
24	CourtDecreeInd	Court decree or custody decree indicator	Green
25	CourtDecreeNotes	Details of court decree or custody decree	Green

How to approach this request?

Reality check

- What is a “normal” eligibility inquiry?

Privacy Rule requirements

Deficit Reduction Act

- Statute
- CMS guidance

State laws

Reality Check

Reality Check

Electronic eligibility inquiries from:

- Health care providers
- Health plans

Response without "unique match"

- Send us the following information, which we need to identify a unique individual

Elements suggested for "unique match"

- Member ID
- Last name
- First name
- DOB

Privacy Rule Requirements

Privacy Rule

May disclose when *required by law*

Disclosure must:

- Comply with applicable law and
- Be limited to relevant requirements of law

No minimum necessary standard

Disclosure accounting applies

Privacy Rule

But, what if it's not required by law?

May use and disclose for

- Payment activities of
- Another covered entity (e.g., Medicaid)

Payment activities include

- Determinations of eligibility or coverage
- Coordination of benefits

Privacy Rule

Limited to minimum necessary

Disclosure protocols

- Member ID
- First, Last name
- DOB

Reasonable reliance

- HITECH Act
- What is "reasonable"?

Privacy Rule disclosures

Verification requirements

- Identity
- Authority

May reasonably rely on

- Written statement of authority from:
  - Public official or
  - Person acting on behalf of public official

The Deficit Reduction Act of 2005

Deficit Reduction Act of 2005

Reduce program costs by $40 Billion

- Medicare
- Medicaid
- Student loan formulas

Employing mechanisms such as:

- Allowing Medicaid cost-sharing
- Preventing “artificial impoverishment”
- Requiring documentation of citizenship
- Pursuing payments from third parties

Pursuing 3rd party payments

"Clarified" broad scope of 3rd parties

- Health insurers
- Self-insured plans
- PBMs
- TPAs

3rd parties must:

- Accept State Medicaid's right of assignment
- Respond to inquiries 3 years after service provided

Pursuing 3rd party payments

3rd Parties must not deny claim if:

- Submitted within 3 years of services and
- State takes action to enforce within 6 more years

3rd parties must provide information

- About Medicaid eligible individuals
- To determine whether (and when) covered
- In manner prescribed by Secretary

Pursuing 3rd party payments

All premised on: SSA § 1902*

(a) A State plan for medical assistance must—

. . . .

(25) Provide—

. . . .

(I) that the State shall provide satisfactory assurance to the Secretary that the State has in effect laws requiring health insurers . . . as a condition of doing business in the State, to:

** 42 U.S.C. § 1396a(a)(25)(I).*

Pursuing 3rd party payments

- (i) provide, with respect to individuals who are eligible [for Medicaid], [eligibility] information . . . in a manner prescribed by the Secretary;
- (ii) accept the State's right of recovery and the assignment;
- (iii) respond to any inquiry by the State regarding a claim for payment . . . submitted not later than 3 years after the date [a] health care item or service [was delivered]; and

Pursuing 3rd party payments

- (iv) agree not to deny a claim . . . based solely on date of claim, the type or format of claim, or a failure to present proper documentation at the point-of-sale, if—
  - (I) State submits claim within 3-years; and
  - (II) State takes action to enforce rights with respect to such claim within 6 years of the State's submission of claim;

CMS GUIDANCE

#3 States must require health insurers . . .

#4 DRA directs States to pass laws . . .

#7 DRA does not mandate health insurers comply . . .

CMS HIPAA Opinion

Each State has latitude in determining how to comply with DRA

May disclose when *required by law*

State laws requiring disclosure for COB purposes do not violate HIPAA

So . . .

It all comes down to State law

State Laws

States

Arizona

- Provide information necessary to:
  - Determine coverage for Medicaid eligibles
  - Including time period and nature of coverage
  - For person, spouse, and dependents

Florida

- Provide "only that information necessary"
- To determine coverage furnished to person eligible for Medicaid

States

Washington

- Medicaid to provide information to insurers
- Insurers to identify “joint beneficiaries”
- Transmit information to Medicaid

Massachusetts

- Provide “sufficient information” to determine
- Whether Medicaid eligible is or could be beneficiary under health plan in State

States

Wisconsin

- As condition of doing business in State, provide
  - Information on whether Medicaid eligible is covered
  - Including time period and nature of coverage
- Must enter into written agreement
- Reimbursable costs
- **May Not** request employer's name, unless
  - Information is available from another source
  - i.e., TPA or PBM

Manner Prescribed by the Secretary

Deficit Reduction Act

Provide information “in a manner prescribed by the Secretary”

ASC X12N 270/271

- Unique match, 3-4 data elements

PIE Transaction

- Entire membership file
- “Mirrors format of the 271 standard”

Summing up . . . .

Disclose for DRA request if:

- State law specifically requires disclosure of:
  - Entire eligibility file;
  - Requested data elements.
- If request is from another State:
  - State law applies to out-of-State insurers;
  - State has jurisdiction

Vendor Data Use Agreement

- Limit use to relevant State(s)

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