Expiration Date: Until Withdrawn

DEPARTMENT OF MANAGED HEALTH CARE
980 Ninth Street, Suite 500
Sacramento, CA 95814

September 15, 2003

DEPARTMENT ADVICE NO. 03-08

TOPIC: Compliance with Section 1366.35(i): Disclosure of the Availability of HIPAA Coverage; Model Language for Use in Evidences of Coverage

Subject Matter:

It has come to the Department's attention that a full service plan licensee has failed to implement fully the requirements of Section 1366.35(i) [SB 265, effective January 1, 2001]. Specifically, the licensee's group contract evidence of coverage omitted the disclosure required by Section 1366.35(i). This Department Advice is issued to provide guidance regarding application of Section 1366.35(i).

Action:

Section 1366.24(a) requires:

> Every health care service plan evidence of coverage, provided for group benefit plans subject to this article [Article 4.5, California Continuation Benefits Replacement Act "Cal-COBRA"], that is issued, amended, or renewed on or after January 1, 1999, shall disclose to covered employees of group benefit plans subject to this article the ability to continue coverage pursuant to this article, as required by this section.

Section 1366.35(i), requires:

> Every [full service] health care service plan shall disclose as part of its COBRA or Cal-COBRA disclosure and enrollment documents, an explanation of the availability of guaranteed access to coverage under the Health Insurance Portability and Accountability Act of 1996, including the necessity to enroll in and exhaust COBRA or Cal-COBRA benefits in order to become a federally eligible defined individual.

Accordingly, every full service plan group contract evidence of coverage must provide the disclosure required by Section 1366.35(i).

By its terms, Section 1366.35(i) applies to full service plan contracts offered, delivered, amended or renewed on or after January 1, 2001. Accordingly, it is the Department's expectation that all full service plans be presently in full compliance. All full service plan licensees should review their current forms of evidences of coverage and other COBRA and Cal-COBRA disclosure documents and revise as necessary to ensure that all such documents effective January 1, 2004 include adequate disclosure regarding availability of HIPAA coverage.

To assist its licensees in achieving compliance, the Department provides model language below, which the Department considers illustrative of full and fair disclosure of the availability of HIPAA coverage and acceptable for the required EOC disclosure. The Department does not require health plans to use this specific language in their EOCs and will review other proposed language submitted by plans for compliance with Section 1366.35(i).

Your Rights Under HIPAA If You Lose Group Coverage

Federal law known as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) protects health insurance coverage for workers and their families when they change or lose their jobs. California law provides similar and additional protections.

If you lose group health insurance coverage and meet certain criteria, you are entitled to purchase individual health coverage (nongroup) from any health plan that sells individual coverage for hospital, medical or surgical benefits. Every health plan that sells individual health coverage for these benefits must offer individual coverage to an eligible person under HIPAA. The health plan cannot reject your application if: you are an eligible person under HIPAA; you agree to pay the required premiums; and you live or work inside the plan's service area.

To be considered an eligible person under HIPAA you must meet the following requirements:

- You have 18 or more months of creditable coverage without a break of 63 days or more between any of the periods of creditable coverage or since your most recent coverage was terminated;
- Your most recent creditable coverage was a group, government or church plan that provided hospital, medical or surgical benefits. (COBRA and Cal-COBRA are considered group coverage);
- You were not terminated from your most recent creditable coverage due to nonpayment of premiums or fraud;
- You are not eligible for coverage under a group health plan, Medicare, or Medicaid (Medi-Cal);
- You have no other health insurance coverage; and

- You have elected and exhausted any continuation coverage you were offered under COBRA or Cal-COBRA.

There are important choices you need to make in a very short time frame regarding the options available to you following termination of your group health care coverage. You should read carefully all available information regarding HIPAA coverage so you can understand fully the special protections of HIPAA coverage and make an informed comparison and choice regarding available coverage. For more information, [insert if applicable: including premiums and a copy of the Plan's HIPAA individual plan EOC], please call [plan telephone number].

If you believe your HIPAA rights have been violated, you should contact the Department of Managed Health Care at 1-888-HMO-2219 or visit the Department's web site at www.hmohelp.ca.gov.

Further information:

Authority: California Health and Safety Code §§ 1351, 1352, 1364, 1366.35, 1367(h), 1373.621 and 1399.801 et seq.; California Code of Regulations, Title 28, § 1300.51 and 1300.52.

Licensee questions regarding this Department Advice should be directed to Licensing Division counsel.