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# United Benefit Advisors Q&A

## What Employers Need to Know About HIPAA and HITECH

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	QUESTION	ANSWER
Q&A-1	If a company has a level-funding health plan, does the employer need to have the PHI notice or is this type of health plan more along the line of full-insured?	The term "level-funding" can cover a variety of arrangements, so we recommend you consult an attorney to receive advice regarding your particular plan; however, in general, level-funded plans are self-insured plans with full HIPAA compliance obligations including the obligation to maintain and distribute a Notice of Privacy Practices.
Q&A-2	Is an email to the TPA requesting assistance for an employee claim considered ePHI?	Generally, yes. If the e-mail is very general and does not contain identifying information for the employee bringing the claim, then no. Determining whether information is ePHI requires a case-by-case analysis.

	QUESTION	ANSWER
Q&A-3	<p>From an Employer Aspect, if an employee comes in and asks for help in getting information on their Health situation (let's say for the health plan) We as Employers would need an Authorization signed? Also, did you say if an Employer has a FSA and Or HRA they need the PHI completed with employees?</p>	<p>If an employee requests general information about the health plan, such as what is covered or how to sign up, you can provide such information without an authorization. If the employee asks for help with a specific aspect of their care under the plan, such as a claim appeal, a "hands off" fully-insured plan sponsor should refer the employee to the TPA. A hands on or self-insured administrator can assist the employee, but best practice is to obtain the employee's authorization to do so because it is not entirely clear that such assistance is part of treatment or operations under the health plan.</p> <p>If an employer has an FSA or HRA, then by definition they maintain a self-insured plan and technically such plans are subject to full HIPAA compliance obligations.</p>
Q&A-4	<p>Does the BAA need to be executed between a business associate and fully insured plan or just for self-funded plans?</p>	<p>If an employer is taking a "hands off" approach to PHI with a fully-insured plan, then generally the carrier will be the only one sending PHI to vendors (so the carrier will enter BAAs with vendors). If the employer does hire a vendor (such as an enrollment vendor), there should be a BAA between the plan and the vendor and sometimes the carrier will require a release from the employer to send PHI directly to the vendor. The PHI should not flow through the employer if it is taking a "hands off" approach.</p>
Q&A-5	<p>Many of us on the call are brokers/agents with fully insured clients, how do we advise them to be "hands-off" so they don't have to comply with HIPAA?</p>	<p>Your clients should make sure they never see anything beyond enrollment data and Summary Health Information from their plan. If employees need claim assistance, they should send them directly to the carrier for help. If the client has an FSA or HRA, the situation is tricky because technically part of their plan is self-insured.</p>
Q&A-6	<p>Similarly to your lab results, individuals state they are unable to read his/her medical chart by medical staff per HIPAA. Is this true?</p>	<p>If I understand the question, medical staff refused to read a chart to an individual, citing HIPAA? The medical staff may need to verify identity, but once a person's identity is verified, that person has a right to view / access their medical information.</p>
Q&A-7	<p>An example of a self-insured plan with fewer than 50 participants, would be a self-administered HRA or FSA.</p>	<p>Good point, and such plan would not be subject to HIPAA.</p>