

**BULLETIN 07-9**

**DATE: July 31, 2007**

**TO: INSURANCE CARRIERS AND PRODUCERS OFFERING HEALTH  
BENEFIT PLANS IN IDAHO**

**FROM: WILLIAM W. DEAL  
DIRECTOR**

**SUBJECT: EMPLOYMENT-RELATED INDIVIDUAL HEALTH BENEFIT PLANS  
(LIST BILLING)**

The Idaho Department of Insurance has received questions from carriers, producers and employers about the sale of individual health plans to an employer's employees, a practice sometimes referred to as "list billing." While list billing may be handled in different ways, a typical program involves the sale of individually rated policies to an employer's employees that are paid for through payroll deductions. List billing programs are often used as a substitute for a traditional employer sponsored health plan, particularly in the small employer market, and may be intended to avoid state or federal requirements applicable to group health plans.

The federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) prohibits list billing for group health benefit plans (*see* 29 CFR 2590.702(c)(2)(ii)). Under state and federal law, a plan is considered a group health plan if the employer contributes directly or indirectly to the premiums. The preamble to the final federal regulations on health coverage portability for group health plans explains this distinction as follows:

If an employer makes contributions to health insurance premiums, directly or indirectly, whether the policy is individual or group or whether the employer is a party to the insurance contract, the coverage is treated as group health plan coverage for purposes of the Health Insurance Portability and Accountability Act (HIPAA). Separation of the employer from the issuer through an HRA or other alternative plan does not prevent classification as a group health benefit plan.

HIPAA prohibits discrimination by a group health plan based on health factors. Therefore, carriers may not charge or quote an employer a different premium for an individual in a group of similarly situated individuals based on a health factor if the employer directly or indirectly contributes to plan premiums. For example, if an employer offers employees a special allowance that may only be used for the purchase of individual health insurance, the plan would be considered a group health plan for purposes of HIPAA and it would be a violation of federal law for the plans to be rated based on individual health factors. On the other hand, if the employer simply offers employees an increase in wages in lieu of offering a health plan, with no special conditions, restrictions or requirement that the increase be used to purchase health coverage and the employer does not claim a federal tax benefit for providing health coverage, any individual policies purchased with the increase would likely not be considered a group health plan for purposes of HIPAA.

Some individual health benefit plan coverage arrangements offered to employer groups that may be considered group coverage include Health Reimbursement Accounts (HRA) and cafeteria plans. If a carrier offers coverage in conjunction with an employer HRA, or for which the premium is paid or reimbursed through an HRA, the coverage, even if provided through an individual health benefit plan, may be considered a group health benefit plan under federal law and subject to state and federal laws relating to non-discrimination, guaranteed issue, pre-existing conditions, special enrollment and guaranteed renewability. One test of whether the employer is contributing to the plan is whether the employer claims any tax benefit for providing health coverage. If a tax benefit is claimed, the plan will likely be considered a group health plan and subject to HIPAA non-discrimination rules. It is important to keep in mind that the employer need not be a party to the insurance policy or arrange or pay for it directly in order for the coverage to be considered a group health benefit plan. The HIPAA non-discrimination rules also apply to dependents of employees.

Carriers and producers selling health plans should review their marketing materials and underwriting practices as well as any existing list billing arrangements to make certain they are compliant with the HIPAA restrictions discussed in this bulletin. If a health plan carrier or producer identifies any list billing arrangements that may be in violation of HIPAA, please contact the Department to discuss appropriate compliance efforts.

Any questions may be directed to Joan Krosch, (208) 334-4300 or [Joan Krosch](#).