

# THE VOICE

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HR|experts®

Call 1.888.HREXPRT for an answer today!

I would like to thank those of you who completed the HR|Experts Satisfaction Survey this November. I received comments from 176 members. Thank you for sharing your compliments as well as suggestions on how we can continue to or better meet your needs. Over the next few months, I will address all of the questions, comments, and requests for additional services through E-Alerts and future issues of *The Voice*.

A common question concerned managing the list serve e-mails. Below is more detailed information. If you have additional questions, please don't hesitate to e-mail or call me. I want to make sure you can access and benefit from this tool.

**Members' Only List Serve** – The list serve is an e-mail discussion group that enables you to ask your peers at other Medical Mutual member companies for advice and/or recommendations while also sharing the best practices of your organization.

- To sign up, send me an e-mail – [jill.schultz@callhrexpert.com](mailto:jill.schultz@callhrexpert.com)
- To send a question to the list serve, send the question in an e-mail to [hrexpert-members-list@lists.callhrexpert.com](mailto:hrexpert-members-list@lists.callhrexpert.com). Remember to include a "Subject" in your e-mail so others can see and follow the discussion topic/thread.

**No longer want to receive the list serve e-mails in digest form?** You can change the way you receive list serve messages so that you receive a separate e-mail for each message sent to the list serve. Keep in mind that on some days you may receive 6 or more e-mails. You can change your setting from "Mime digest" to "Normal: receive messages as they are contributed" at [http://lists.capital.org/read/login/?go=http://lists.capital.org/read/all\\_forums/](http://lists.capital.org/read/login/?go=http://lists.capital.org/read/all_forums/), enter your e-mail, and click on "My Account".

**Unable to open list serve attachments?** This is most likely due to a setting on your e-mail account. If your IT expert cannot assist you, send an e-mail directly to me (not the list serve). I'll ask you a few questions and we'll work to correct the problem.

I look forward to continuing to partner with Medical Mutual Insurance Company to successfully support our Members with a variety of Human Resource related services.

Sincerely,



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## Contact HR|Experts:

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Phone calls and messages will be responded to 8:30am-5:00pm Monday-Friday.



Medical Mutual<sup>SM</sup>

PROTECTING OUR PROFESSION

HR|Experts is provided as a benefit to members of Medical Mutual.

The Voice is not designed or intended to render legal advice to its members.

# Is Misdirected E-mail a HIPAA Privacy Breach?

**Issue:** *One of your billing department employees received and opened an e-mail containing protected health information (PHI) that a nurse mistakenly sent her. The employee noticed that she was not the intended recipient, alerted the nurse of the misdirected e-mail, and then deleted it. Does this constitute a breach of privacy that would require your company to comply with HIPAA's breach notification rules?*

**Answer:** No, the billing department employee's use of the information was done in good faith and within the scope of authority and, therefore, would not constitute a breach. Notification would not be required, provided the employee did not further use or disclose the information in a manner not permitted by HIPAA's Privacy Rule.

**What is a breach?** Final regulations, which became effective on September 23, 2009, clarify that the term "breach" means the acquisition, access, use or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule that compromises the security or privacy of the PHI. Compromising the security or privacy of the PHI means posing a

significant risk of financial, reputational or other harm to the individual.

To determine if an impermissible use or disclosure of PHI constitutes a breach, covered entities and business associates will need to perform a risk assessment to determine if there is a significant risk of harm to the individual as a result of the impermissible use or disclosure. In performing the risk assessment, consider the following factors:

- the type and amount of PHI involved;
- who impermissibly used or to whom the information was impermissibly disclosed;
- whether the covered entity took immediate steps to mitigate an impermissible use or disclosure; and
- whether the PHI was returned prior to it being accessed for an improper purpose.

**Breach exclusions.** A breach does **not** occur in the following situations:

- any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or a business

associate if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule;

- any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity or business associate (or organized health care arrangement in which the covered entity participates), and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule; and
- a disclosure of PHI where a covered entity or business associate has a good faith belief that an authorized person to whom the disclosure was made would not reasonably have been able to retain such information.

Source: CCH: Healthcare HRAnswersNow, Newsletter, October 12, 2009. The Healthcare HRAnswersNow database is a free service for Medical Mutual policyholders. Access the database on [www.MedicalMutualGroup.com](http://www.MedicalMutualGroup.com). Contact HR|Experts for more information.

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## EEOC Changes Poster Requirements

The EEOC has revised its "Equal Employment Opportunity is the Law" poster to reflect the new federal employment discrimination law and to add the Genetic Information Nondiscrimination Act of 2008 (GINA), which is effective November 21, 2009.

Employers need to post EITHER a supplement poster alongside the EEOC's September 2002 "EEO is the Law" poster; OR a new November 2009 complete version of EEOC's "EEO is the Law" poster. Both of these options are available, along with additional information about compliance, at [www.eeoc.gov/posterform.html](http://www.eeoc.gov/posterform.html).

# Michelle's Law Affects Group Health Plans

Michelle's Law is a federal law that extends health plan benefits coverage to a dependent child who is over the age of 18 and enrolled in college and would lose coverage in the event of a medically necessary leave of absence that would cause the child to lose full-time student status. The requirements of the new law are effective October 9, 2009, and apply to all policies that are issued or renewed on or after that date. Calendar year plans have until January 1, 2010 to comply.

The law requires health plans and issuers of health insurance coverage to continue coverage for college students who are forced to take a leave of absence or change their enrollment status due to a serious illness or injury. It applies to fully insured and self-funded Group and Individual medical plans as well as pharmacy, behavioral health and, when part of the health plan, dental and vision coverage.

All group health plans must allow a college student with a serious illness or injury to remain eligible for active dependent coverage for 12 months, even if he or she no longer qualifies as a full-time student. The plan must permit students at a postsecondary educational institution who lose full-time status to continue coverage until the earlier of (1) one year after the first day of the medically necessary leave of absence or (2) the day that the student's coverage would have otherwise ended.

The individual must be covered as a full-time student, as defined in the plan, at a postsecondary educational institution immediately before any serious illness or injury occurs. The student must experience a serious illness or injury that requires a medically necessary leave of absence or a medically necessary change in enrollment status that: (1) begins while the student is suffering from a serious illness or injury; (2) is medically necessary; and (3) causes the loss of student status under the terms of the plan or health insurance coverage.

Additionally, if the student experiences a change in coverage during the leave of absence, the student remains eligible for continued coverage under the changed plan to the same extent that he/she would have been eligible for continued coverage under the prior plan, so long as the changed plan continues to provide coverage for dependent children as beneficiaries.

Employers should make sure that summary plan descriptions are up to date and clarify any provisions related to dependents who are full-time college students.

## NC Unemployment Benefits; Separation Due to Medical Reasons

Employees who remain unable to return to work from a medical leave of absence and are separated from payroll due to medical reasons will be eligible to receive unemployment benefits once they become able and available for work.

In NC, experience rated employers (those that pay quarterly taxes) need to know that although these employees may receive unemployment benefits, the benefits can qualify as *non-charging*. Unemployment benefits in these situations are paid out of the Employment Security Commission's *General Fund* rather than being charged to an employer's account.

Upon receiving a NCUI Form 500AB (*Notice of Claim and Request for Separation Information*), employers need to specifically respond that the employee was "*separated due to medical reasons.*" For additional information regarding non-charging of benefits go to <http://www.ncesc1.com/business/UI/uiClaims3.asp>.



### Quarterly Quote

*"Things turn out best for the people who make the best of the way things turn out."*

*- John R. Wooden, Hall of Fame and retired NCAA Basketball Coach*



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## Workplace Accommodations: Low Cost, High Impact

Since 1994, JAN has interviewed employers to determine the results of their efforts to assist employers with making reasonable accommodations to enable employees to do their jobs. The most recent study of 366 employers from July 2008 to June 2009 showed that employers in many cases implemented relatively low cost accommodations (\$0-\$600) that benefited the surveyed employers in retention of valuable employees, improved employee morale and reduced workers' compensation costs while maintaining a more diverse workforce.

The Job Accommodation Network (JAN), has released their annual results on Workplace Accommodations entitled "Low Cost, High Impact" at: <http://www.jan.wvu.edu/media/LowCostHighImpact.doc>

JAN is a free service provided by the US Department of Labor's Office of Disability Employment Policy as a resource for employers and people with disabilities to promote employment of the disabled.

JAN provides a searchable database with research on disabilities and possible accommodations on their website at [www.jan.wvu.edu](http://www.jan.wvu.edu).

## Upcoming Training

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*Discount training rates apply to Medical Mutual policyholders. Contact HR|Experts for registration information and additional training dates.*