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## MEMORANDUM

Re: IRS Analyzes Effect of HIPAA on Informational Requests

From: Joseph A. Sergi

Date: September 22, 2004

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On September 20, 2004, the IRS Office of Chief Counsel released a notice (CC-2004-034) outlining the effect of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Regulations, 45 C.F.R. parts 160 and 164, on IRS requests for protected information (i.e., medical records and other individually identifiable health information) from a taxpayer or third party. For insurance companies, this notice is most relevant because it involves IDRs and third-party summonses that seek policyholder health information. The notice concludes that, in order to obtain protected information, the IRS must either obtain the consent of the policyholder or show that the information requested is relevant and material to a legitimate law enforcement inquiry that is specific and limited in scope and where de-identifying the information is not sufficient. If a court case has been filed, the notice provides that the IRS must either obtain a court order or enter a stipulation or protective order with the taxpayer to obtain protected information. Finally, due to the lack of established guidelines in this area of law, the notice requires that all referrals seeking court action to enforce a summons requesting protected information must be forwarded for pre-review to the Chief, Branch 3, Collection, Bankruptcy & Summonses Division, Associate Chief Counsel (Procedure & Administration).

As a result, clients should be aware of this notice when evaluating informational requests from the IRS related to information potentially protected by HIPAA. Please call with questions.