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May 2006

THE SOCIAL SECURITY NUMBER PRIVACY ACT—WHAT YOU DON'T KNOW COULD HURT YOUR MEDICAL PRACTICE

by Andrea M. Johnson

In a direct effort to combat identity theft, the Michigan Legislature joined with numerous other states to enact the Michigan Social Security Number Privacy Act, Public Act 454 of 2004 (MCL 445.81, et. seq.) in 2005.

The goal of the act was to make access to a person's social security number much more difficult. This act prohibits the use of an entire social security number in certain circumstances, restricts its uses in others and requires that policies be adopted to ensure that all uses are lawful, and most importantly, confidential.

The act specifically places a burden on employers to take affirmative steps to protect their employees' private information, and it provides both a criminal and civil penalty for the intentional disclosure of this private information. While many of the requirements of the act became effective on March 1, 2005, all employers were expected to become compliant no later than Jan. 1, 2006.¹

March 1, 2005 Requirements

As of March 1, 2005, an employer cannot disclose more than four sequential digits of an individual's social security number to third parties; display them in public by way of ID badges, accessible computer screens, bulletin boards or include them in any visible form on a mailed document or information. Employers may not require an employee to use or transmit all or part of their social security number over the Internet, computer system or network, unless the connection is "encrypted" or "secure." Furthermore, employers may not place more than four sequential digits of an employee's social security number on any document or information mailed to an employee; unless it was authorized by state law, an application or enrollment process initiated by the employee or to establish, confirm the status of, service,

amend or terminate an employee and/or health insurance benefit or to verify the accuracy of the social security number itself.

Some exceptions exist for employers who were using the numbers as a bona fide identifier as of March 1, 2005, but these exceptions became largely unavailable after Jan. 1, 2006.

January 1, 2006 Requirements

In addition to those requirements set forth in 2005, the legislature added additional requirements to become effective on Jan. 1, 2006.

Now employers may not use all or more than four sequential digits of an employee's social security number on identification badges, membership cards, permits or licenses. An employer cannot use all or more than four sequential numbers as the primary account number for an individual.² Whereas in March 2005, the act prohibited mailing the numbers when visible.

In 2006, employers are prohibited against mailing documents containing the complete number or more than four sequential digits; unless permitted by law, regulation, court order, sent as part of an application or enrollment process; to establish, confirm or amend an account or contract policy or sent by a public body under certain circumstances.

Perhaps most importantly, the act requires businesses that regularly obtain social security numbers, such as a medical practice, to develop, publish and enforce a privacy policy. Under MCL 445.84, the policy must:

- Ensure confidentiality of social security numbers;
- Prohibit unlawful disclosures of social security numbers;

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- Limit access to documents containing social security numbers;
- Establish procedures for disposing of documents containing social security numbers;
- Establish penalties for violating the policy.

The policy must be published in an employee handbook, procedures manual or similar document and does not apply when the numbers are obtained in compliance with the Fair Credit Reporting Act or the Gramm-Leach-Bliley Act.

Lawful Uses

Employers can still use social security numbers when authorized by state and federal statutes, rules, regulations, court orders with legal discovery or through criminal investigations. Administrative use of the number can still be used to verify an individual's identity, criminal records, lawful pursuit of an individual's legal rights, investigation of child support or tax liability or the administration of health insurance benefits and retirement programs.

Penalties for Violation

The act imposes criminal penalties for knowing violations, including imprisonment for not more than 93 days or a fine of not more than \$1,000 or both. The act also establishes a civil

remedy for affected individuals, and provides for a recovery of actual damages or \$1,000, whichever is greater, for an unintentional disclosure, plus the addition of attorney's fees for knowing violations.

Conclusion

Given the detailed requirements, caveat exceptions and the harsh penalties for disclosure, the best practice is to stop using social security numbers for any purpose other than those required under state or federal law.

If such numbers are used in the regular course of business, every employer must comply with the provisions of the act and adopt a privacy policy. Compliance can be aided by training all employees to know the restrictions under the Social Security Number Privacy Act, and ensuring that any third party companies used (i.e. payroll, medical benefits, billing, etc.) know the guidelines and adhere to your practice's privacy policy.

If your practice does not yet have a policy concerning private information, or if social security numbers have been improperly disclosed, contact your Plunkett & Cooney attorney or the Labor & Employment Practice Group leader, Theresa Smith Lloyd, for further assistance.

¹ The rules and exceptions under the act are lengthy and somewhat complicated. As a result, this summary does not purport to describe every nuance in the law, but merely provide an overview of those portions, which would be most helpful for the running of your medical practice.

² If an employer was not using the numbers for any of these purposes prior to March 1, 2005, it could not begin to do so after. Further, the act does provide an exception for employers who used the numbers prior to March 1, 2005 and when the use is ongoing, continuous and in the regular course of business. However, the exception will no longer apply if the use stops for any reason. Therefore, an employer may accidentally become in violation at any point. The best practice is to stop using an employee's Social Security number for any purpose.