

Document: POLICY	Document Number: 0403	Revision: DRAFT	Page of 1 4
Subject: SEPARATION OF FUNCTIONS: HEALTH PLAN, HEALTH CARE PROVIDER, AND HEALTH CARE CLEARINGHOUSE		Effective Date: April 14, 2003	
Originator: John Bianconi, Acting Privacy Official Department of Health and Human Resources		Assistant Secretary for Operations: Date:	
Secretary of DHHR:		Date:	

1.0 PURPOSE

The purpose of this Policy is to set forth the Department of Health and Human Resources (DHHR) procedure for Separation of Functions: Health Plan, Health Care Provider, and Health Care Clearinghouse in compliance of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

2.0 SCOPE

This policy applies to all employees, personnel from other organizations, contracting personnel, and vendors of DHHR.

3.0 APPLICABLE DOCUMENTS/MATERIAL

- 3.1 Health Insurance Portability and Accountability Act of 1996 (HIPAA)
 - 3.2 Reference: Federal regulation 45 CFR § 164.504(g) and 65 FR p. 82509
- SEE ALSO:**
- 3.2.1 SINGLE AFFILIATED COVERED ENTITY

4.0 RESPONSIBILITY/REQUIREMENT

- 4.1 **Responsibility:** DHHR Privacy Official, Bureau Designated HIPAA Coordinator, Bureau and/or Office Managers

- 4.2 **Background:** as follows:

4.2.1 When a single entity combines within itself functions that meet the definition of two or three of the different types of *covered entity* under federal HIPAA privacy regulations (that is, the functions of a *health plan*, a *provider of health care*, and/or a *health care clearinghouse*), *protected health information* (PHI) that is received or created by each of these "covered functions" must be segregated from PHI received or created by the other covered function or functions. Exchanges of PHI between or among the covered functions must be treated as *disclosures* of PHI, and are only permitted to the extent allowed by each function's own policies and procedures. Federal HIPAA privacy regulations apply to each function as if it were a free-standing entity.

4.2.2 In particular, PHI that pertains to any one individual may only be exchanged between the health care provider and health plan functions if the individual is receiving services from both functions.

Document: POLICY	Document Number: 0403	Revision: DRAFT	Page 2 of 4
Subject: SEPARATION OF FUNCTIONS: HEALTH PLAN, HEALTH CARE PROVIDER, AND HEALTH CARE CLEARINGHOUSE		Effective Date: April 14, 2003	

- 4.2.3 If several separate legal entities have identified themselves as a single affiliated covered entity, and as a result the several entities are treated as a single entity for purposes of compliance with federal HIPAA privacy regulations, then both this policy and the SINGLE AFFILIATED COVERED ENTITY policy apply.

NOTES: (1) Federal HIPAA privacy rules do not provide much detail regarding how entities with multiple covered functions are required to comply with the regulations as they apply to the different functions. The regulatory requirement is found at 45 CFR § 164.504(g). There is a brief discussion of the requirement in the preamble to the December 28, 2000, publication of the regulations in the Federal Register (65 FR 12/28/2000, pg. 82509) This policy is based on the interpretation that the functions must be treated as if they were separate legal entities, even if they are not.

(2) Additional rules apply to the disclosure of PHI from an employer sponsored group health plan to the plan sponsor. See the following policies:

EMPLOYEE HEALTH BENEFIT PLAN: APPLICABILITY OF FEDERAL PRIVACY REGULATIONS

EMPLOYEE HEALTH BENEFIT PLAN: USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

STANDARDS FOR EMPLOYEE WELFARE BENEFIT PLAN DOCUMENTS: PRIVACY OF PROTECTED HEALTH INFORMATION

4.3 Policy: as follows

4.3.1 DHHR will keep the *protected health information* (PHI) that it creates or obtains in its health plan, health care provider and health care clearinghouse.

4.3.2 The *disclosure* of PHI from the health plan function to the provider function is subject to the same policies and procedures as apply to the disclosure of PHI from the health plan function to any other provider of health care. The use of the health plan's PHI by the provider function will constitute a "disclosure" for purposes of this policy.

4.3.3 The *disclosure* of PHI from the provider function to the health plan function is subject to the same policies and procedures as apply to the disclosure of PHI from the provider function to any other health plan. The use of the provider's PHI by the health plan function will constitute a "disclosure" for purposes of this policy.

Document: POLICY	Document Number: 0403	Revision: DRAFT	Page 3 of 4
Subject: SEPARATION OF FUNCTIONS: HEALTH PLAN, HEALTH CARE PROVIDER, AND HEALTH CARE CLEARINGHOUSE		Effective Date: April 14, 2003	

- 4.3.4 Use and disclosure of PHI that is obtained by the clearinghouse function is limited to the purposes in the *business associate contract* under which it is received or created. Any PHI that is created or received by the clearinghouse function, when the clearinghouse is not functioning under a business associate contract, may only be used or disclosed as necessary for the operation of the clearinghouse, in accordance with the clearinghouse's own policies and procedures adopted to comply with federal HIPAA privacy regulations.
- 4.3.5 No PHI will be shared between the health plan and health care provider functions unless the individual to whom the PHI pertains is both a patient of the health care function and a member (beneficiary) of the health plan function.
- 4.3.6 Any use or disclosure of PHI under the terms of this policy is subject to the MINIMUM NECESSARY RULE and to other DHHR policies regarding the privacy and security of PHI.
- 4.4 Procedure: as follows:
- 4.4.1 The DHHR Privacy Official and the Bureau Designated HIPAA Coordinator will assure that appropriate policies and procedures, applicable to each function, are developed, implemented, and maintained to comply with this policy.
- 4.4.2 The DHHR Privacy Official and the Bureau Designated HIPAA Coordinator will work with senior management of the various functions to which this policy applies, to assure that suitable training in the applicable policies and procedures is provided to all members of the workforce, especially those who may perform duties for more than one covered function. This training will stress the need to keep the PHI of each function physically and electronically separate. Training will also stress the differences between and among seemingly similar policies and procedures that apply to each function.
- 4.4.3 The DHHR Privacy Official, Bureau Designated HIPAA Coordinator, Director of Management Information Services, and senior management of the various functions will implement physical and electronic barriers between and among the various functions to keep the PHI of each function separate from the others.

5.0 DEFINITIONS

- 5.1 Covered entity: An entity which is required to comply with the requirements of HIPAA administrative simplification regulations. Covered entities are: health plans, health care clearinghouses, and health care providers that transmit any health information in electronic form in connection with a *standard transaction*.
- 5.2 Health plan: Brief definition: "Health plan" means an individual or group plan that provides, or pays the cost of, medical care.

Document: POLICY	Document Number: 0403	Revision: DRAFT	Page 4 of 4
Subject: SEPARATION OF FUNCTIONS: HEALTH PLAN, HEALTH CARE PROVIDER, AND HEALTH CARE CLEARINGHOUSE		Effective Date: April 14, 2003	

- 5.3 Provider of health care: Any person or organization which furnishes, bills, or is paid for health care services in the normal course of business.
- 5.4 Health care clearinghouse: a public or private entity, including a billing service, repricing company, community health management information system or community health information system, and “value-added” networks and switches, that does either of the following functions:
- 5.4.1 Processes or facilitates the processing of health information received from another entity in a nonstandard format or containing nonstandard data content into *standard data elements* or a standard transaction.
- 5.4.2 Receives a standard transaction from another entity and processes or facilitates the processing of health information into nonstandard format or nonstandard data content for the receiving entity.
- 5.5 Protected Health Information (PHI): Information, including demographic information, whether oral or recorded in any form or medium, that relates the individual’s health, health care services, or payment for services and which identified the individual.
- 5.4 Disclosure: The release, transfer, provision of access to, or divulging in any other manner of information outside DHHR. **SEE ALSO**: Use
- 5.5 Use: With respect to protected health information, the sharing, employment, application, utilization, examination, or analysis of such information with DHHR. **SEE ALSO**: Disclosure
- 5.6 Business associate contract: A person or organization that performs a function or activity under contract involving the use or disclosure of protected health information, on behalf of DHHR. A person or organization who only assists in the performance of the function or activity is also a *business associate*.
- 5.7 Standard transaction: transactions for which the Secretary of the Department of Health and Human Services (DHHS) has adopted national standards, as follows:
- 5.7.1 Health care claims or equivalent encounter information
- 5.7.2 Health care payment and remittance advice
- 5.7.3 Coordination of benefits
- 5.7.4 Health care claim status
- 5.7.5 Enrollment and disenrollment in a health plan
- 5.7.6 Eligibility for a health plan
- 5.7.7 Health plan premium payments
- 5.7.8 Referral certification and authorization
- 5.7.9 First report of injury
- 5.7.10 Health claims attachments
- 5.7.11 Other transactions that the Secretary of DHHS may prescribe by regulation.