

**EMPLOYEE HEALTH BENEFIT PLAN:
APPLICABILITY OF FEDERAL PRIVACY
REGULATIONS POLICY**

RESPONSIBILITY: Employee Benefits Manager, Privacy Official or Designee(s),
Plan Administrator

BACKGROUND:

Employers that offer health benefits to their employees are sponsoring a health plan, according to federal regulations. Federal privacy regulations treat the employer and its employee health benefit plan as if they were two separate legal entities. The employer is the plan sponsor. The employee health benefit plan is the group health plan. See DEFINITIONS.

The group health plan may be subject to all of the same regulations as a health insurance company or health maintenance organizations (HMO), regarding the privacy of protected health information (PHI). However, if the employer's health plan only offers benefits through an insurance contract with one or more health insurance companies or HMOs, some federal privacy regulations may not apply to it.

If both of the following two criteria are satisfied, Behavioral Health and Health Facilities (BHFF's) group health plan is exempt from certain federal regulations relating to the privacy of protected health information (these regulations are found at 45 CFR Part 164):

- The group health plan offers health benefits to employees only through insurance contracts with health insurance companies, health maintenance organizations, or other entities that meet the definition of "health plan" (see DEFINITIONS), AND
- The group health plan does not receive or create any protected health information except summary health information (see DEFINITIONS) or enrollment information. Enrollment information means information concerning whether an individual is a participant in the group health plan, or has enrolled in or disenrolled from a health insurance or HMO policy offered by the group health plan.

If BHFF meets both of the above criteria, it is exempt from the following requirements as they relate to the group health plan:

1. It does not need to maintain a notice of privacy practices for participants in the group health plan, nor is it required to provide such a notice to any participants in the plan.
2. It does not need to designate a Privacy Official or Designee(s) or contact person or office to receive complaints for the group health plan.
3. It does not need to train members of the workforce who administer the group health plan in privacy policies and procedures.

4. It does not need to implement and maintain physical, administrative and technical safeguards to protect the privacy of protected health information.
5. It does not need to provide a process for individuals to complain about the group health plan's privacy practices.
6. It does not need to apply sanctions to members of the group health plan workforce for violations of privacy policies.
7. It has no responsibility to mitigate any harmful effect resulting from any improper use or disclosure of protected health information.
8. It does not need to adopt policies and procedures for the group health plan to comply with federal privacy regulations that relate to protected health information.
9. The group health plan must retain any amendments to its plan documents made in accordance with the STANDARDS FOR EMPLOYEE WELFARE BENEFIT PLAN DOCUMENTS: PRIVACY OF PROTECTED HEALTH INFORMATION policy. It is not required to retain other documentation otherwise required under federal HIPAA privacy regulations.

The exemptions apply to the group health plan to the extent that the two statements, above, are true. If the two statements above are both true for one part of the group health plan, and are not both true for another part of the group health plan, then BHHF may apply the exemptions only to that part of the group health plan for which they are both true.

For example, if the group health plan provides hospital and physician benefits through a health insurance contract, but pays dental benefits from a self-insured fund, then the exemptions only apply to the insured part of the plan. The dental benefits part of the plan does not qualify for the exemptions, and that part of the group health plan must comply with all requirements of federal privacy regulations as they relate to protected health information.

In the event that a change in the group health plan causes either of the above statements to be true no longer for a part of the plan, then the exemptions will no longer apply to that part of the group health plan.

A group health plan that qualifies for the exemptions listed above is still subject to all other requirements of the federal HIPAA administrative simplification regulations. Ordinarily, these regulations will apply to the only protected health information in the custody of such a group health plan: summary health information and enrollment/eligibility information. However, in the event that the group health plan comes into the possession of any other PHI, even if this is the result of a breach of policy or law, the HIPAA regulations will apply to such information.

POLICY:

BHHF will make an initial determination of the extent to which the exemptions to federal privacy regulations regarding protected health information apply, or do not apply, to any parts of BHHF's group health plan. Based on this determination, BHHF will make necessary changes to policies, procedures and practices in order to assure that its group health plan complies with applicable provisions of federal privacy regulations.

BHHF will determine whether any proposed change in how employee benefits are provided, or in how BHHF's group health plan operates, will affect its obligations under the provisions of federal regulations that relate to the privacy of protected health information (45 CFR Section 164).

If a change in the group health plan results in additional obligations, BHHF will take all steps necessary to comply with the additional obligations prior to, or simultaneous with, making the change in the group health plan. This includes adopting or changing group health plan policies, procedures, practices and documents.

Determinations made in accordance with this policy will be documented and retained for as long as they are applicable, plus six years or longer if required by state law or regulation.

Effective Date: 4/14/03

Revised Dates:



Jerome E. Lovrien, Commissioner, Bureau for Behavioral Health and Health Facilities