

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

**RESPONSIBILITY:** Employee Benefits Manager, Privacy Official or Designee(s), Designated Attorney 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.

In order for the group health plan to disclose protected health information (PHI) to the plan sponsor, without the authorization of the individual to whom the information pertains, the plan sponsor must agree to implement certain safeguards to protect the information. If the group health plan provides benefits under a health insurance contract, the plan sponsor must agree to safeguards before the group health plan may allow the health insurance company or health maintenance organization to disclose PHI to the sponsor. This is true even though the group health plan and the plan sponsor are actually the same company in most instances.

This policy establishes the basic standards for plan documents.

**POLICY:**

The plan documents that establish and govern any employee welfare benefit plan that pays for or provides health benefits to employees shall contain the required provisions specified by this policy, prior to any disclosure of protected health information (PHI) from that health plan to Behavioral Health and Health Facilities (BHHF), in its capacity as plan sponsor. Disclosure includes the provision of access to PHI to any member of the BHHF workforce who is either:

1. Assigned to plan administration activities for the group health plan. This includes claim processing, maintenance of enrollment and eligibility records, analysis of payment and utilization data, and other matters pertaining to the ordinary course of business of the group health plan; or,
2. Authorized to have access to PHI on behalf of BHHF in its role as the plan sponsor, for purposes permitted by the plan documents.

In the event that BHHF provides certain health benefits through an insurance contract with a health insurance company or health maintenance organization, the required plan document provisions must be in place before any member of the BHHF workforce, acting

on behalf of the group health plan, may permit the health insurance company or health maintenance organization to disclose any PHI to BHHF acting in its capacity as plan sponsor.

The group health plan may disclose PHI to members of the BHHF workforce acting in their capacity as providers of health care services, when the services are provided to individuals who receive benefits under the terms of the group health plan. Similarly, health insurance companies and health maintenance organizations are not limited by this policy in their ability to disclose PHI to members of the BHHF workforce acting in the capacity of health care providers. For instance, the group health plan, or a health insurance company under contract to the group health plan, may send a remittance advice that contains the PHI of a group health plan member, to BHHF's business office, to document a claim payment. This is permitted even though the business office employees are not engaged in plan administration activities.

### **Required Provisions for Plan Documents**

1. A requirement that the group health plan will not disclose protected health information to BHHF, in its capacity as the plan sponsor, unless it receives a certification by the plan sponsor that the plan documents have been amended to incorporate the required provisions set forth in this policy.
2. A description of the uses and disclosures of protected health information (PHI), in the custody of the group health plan, that are permitted and required by the plan sponsor. These uses and disclosures may not be inconsistent with applicable state and federal laws and regulations, or BHHF's policies, regarding the privacy, security and confidentiality of individually identifiable health information.
3. An agreement that the plan sponsor will not use or further disclose PHI received from the group health plan other than as permitted or required by the plan documents or as required by law.
4. An agreement that the plan sponsor will ensure that any agents, including any subcontractor, to whom it provides protected health information received from the group health plan, agree to the same restrictions and conditions that apply to the plan sponsor with respect to such information.
5. A statement that the plan sponsor will not use or disclose the information for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the plan sponsor.
6. A requirement for the plan sponsor to report to the group health plan any use or disclosure of the information that is inconsistent with the uses or disclosures permitted or required by the plan documents of which it becomes aware.

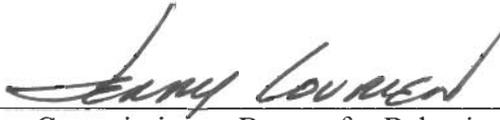
7. A statement that the plan sponsor will permit individuals to have access to any PHI which it has received from the group health plan, in accordance with BHHF's RIGHT OF ACCESS TO PROTECTED HEALTH INFORMATION policy.
8. A statement that the plan sponsor will make available protected health information for amendment and incorporate any amendments to protected health information in accordance with BHHF's INDIVIDUAL REQUESTS TO AMEND HEALTH INFORMATION policy.
9. A statement that the plan sponsor will make available the information required to provide an accounting of disclosures in accordance with BHHF's ACCOUNTING OF DISCLOSURES OF HEALTH INFORMATION policy.
10. An agreement that the plan sponsor will make its internal practices, books, and records relating to the use and disclosure of protected health information received from the group health plan available to the Secretary, Department of Health and Human Services, for purposes of determining compliance by the group health plan with federal privacy regulations regarding PHI (specifically, 45 CFR Parts 160 and 164).
11. An agreement that the plan sponsor will, if feasible, return or destroy all protected health information received from the group health plan that the sponsor still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made; except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
12. In order to provide adequate separation between the plan sponsor and the group health plan, a description of those employees or classes of employees or other persons under the control of the plan sponsor to be given access to the protected health information to be disclosed. Any employee or person who receives protected health information relating to payment, health care operations, or other matters pertaining to the group health plan in the ordinary course of business must be included in this description. That is, this description must include two categories of employees (and other members of the workforce to the extent that this applies to them):
  - 12.1. Those who are assigned to the administration of the group health plan. This includes claim processing, maintenance of enrollment and eligibility records, analysis of payment and utilization data, and other matters pertaining to the ordinary course of business of the group health plan; or,
  - 12.2. Others who are authorized to have access to PHI on behalf of BHHF in its role as the plan sponsor, for purposes permitted by the plan documents.
13. An agreement that the plan sponsor will restrict the access to and use of PHI received from the group health plan by members of its workforce (as listed in item

12, above) to the plan administration functions that the plan sponsor performs for the group health plan.

14. An effective mechanism for resolving any issues of noncompliance, in the event any member of the workforce who is authorized to have access to the group health plan's PHI violates any of the provisions of the plan documents as set forth in this policy.

Effective Date: 4/14/03

Revised Dates:



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