

ASEA/AFSCME LOCAL 52 HEALTH BENEFITS TRUST

Policy on Privacy Effective April 14, 2003

Introduction

The Board of Trustees of the ASEA/AFSCME Local 52 Health Benefits Trust (Trust) self-administers a group health plan (the Plan) for the eligible members of ASEA/AFSCME Local 52, and their eligible spouses and dependents. The Board of Trustees and the Trust Administrator and staff may have access to the individually identifiable health information of Plan participants on behalf of the Plan itself, or for administrative functions of the Plan.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations restrict the Trust's ability to use and disclose protected health information (PHI).

Protected Health Information. Protected Health Information (PHI) means information that is created or received by the Plan and relates to the past, present, or future physical or mental health or condition of a participant; the provision of health care to a participant; or the past, present, or future payment for the provision of health care to a participant; and that identifies the participant or for which there is a reasonable basis to believe that the information can be used to identify the participant. Protected health information includes information relating to persons living or deceased.

It is the Trust's policy to comply fully with HIPAA's requirements. To that end, all members of the Board of Trustees, the Trust Administrator and staff, and the Trust's Business Associates and their staffs, who have access to PHI, must comply with this Privacy Policy. No third party rights (including but not limited to rights of Plan participants, beneficiaries, covered dependents, or Business Associates) are intended to be created by this Policy. The Trust reserves the right to amend or change this Policy at any time (and even retroactively) without notice. To the extent this Policy establishes requirements and obligations above and beyond those required by HIPAA, this Policy shall be aspirational and shall not be binding upon the Trust. This Policy does not address requirements under other federal laws or under state law.

Plan's Responsibilities as Covered Entity

I. Privacy Official and Contact Person

The Trust Administrator, Administrative Services, Inc., has assigned a Privacy Official, Leslie Carlson. Leslie Carlson, or her successor, will be the Privacy Official for the Plan. The Privacy Official will be responsible for the development and implementation of policies and procedures relating to privacy. The Privacy Official will also serve as the contact

person for participants who have questions, concerns, or complaints about the privacy of their PHI.

II. Workforce Training

It is the Trust Administrator's policy to train all members of its workforce on its privacy policies and procedures. The Privacy Official is charged with developing training and programs so that all of the staff with access to PHI receive training necessary to permit them to carry out their functions within the Plan and to protect participants' PHI. The Privacy Official will also ensure that all staff with access to PHI have received a copy of this Privacy Policy, have familiarized themselves with its contents.

III. Technical and Physical Safeguards and Firewalls

The Trust Administrator will establish on behalf of the Plan appropriate technical and physical safeguards to prevent PHI from intentionally or unintentionally being used or disclosed in violation of HIPAA's requirements. Technical safeguards include limiting access to information by creating computer firewalls. Physical safeguards include locking doors and file cabinets.

Firewalls will ensure that only authorized Trust staff will have access to PHI, that they will have access only to the minimum amount of PHI necessary for plan administrative function, and that they will not further use or disclose PHI in violation of HIPAA's privacy rules.

IV. Notice of Privacy Practices

The Privacy Official is responsible for developing and maintaining a Notice of Privacy Practices that describes:

- The uses and disclosures of PHI that may be made by the Plan;
- The individual's rights; and
- The Plan's legal duties with respect to PHI.

The notice will inform participants that the Trust will have access to PHI in connection with its plan administrative functions. The notice will also provide a description of the Trust's complaint procedures, the name and telephone number of the contact person for further information, and the date of the notice.

The Notice of Privacy Practices will be individually mailed to all participants:

- No later than April 14, 2003;
- On an ongoing basis, at the time of an individual's enrollment in the Plan; and
- Within 60 days after a material change to the notice.

V. Complaints

The Privacy Official, Leslie Carlson, or her successor, toll free 866-553-8206 will be the Plan's contact person for receiving complaints. The Privacy Official is responsible for creating a process for individuals to lodge complaints about the Plan's privacy procedures and for creating a system for handling such complaints. A copy of the complaint procedures shall be provided to any participant upon request.

VI. Sanctions for Violations of Privacy Policy

Sanctions for using or disclosing PHI in violation of this Privacy Policy will be imposed in accordance with the professional service contract between the Trust and the Trust Administrator or the Business Associate Agreement between the Trust and the advisor to whom it relates, up to and including termination.

Use or disclosure of PHI in violation of this Privacy Policy by a member of the Board of Trustees may constitute a breach of fiduciary duty. As such, the use or disclosure will be subject to thorough review by the Board of Trustees, and appropriate action will be taken in accordance with the terms of the Trust Agreement.

VII. Mitigation

The Trust shall mitigate, to the extent possible, any harmful effects that become known to it of use or disclosure of an individual's PHI in violation of this Policy. As a result, if an employee or agent of the Trust becomes aware of a disclosure of PHI, either by another the Trust Administrator or an outside consultant, contractor or plan professional, that is not in compliance with this Policy, that person must immediately contact the Privacy Official so that appropriate steps can be taken to mitigate the harm to the individual.

VIII. No Intimidating or Retaliatory Acts; No Waiver of HIPAA

Neither the Trust Administrator nor any outside plan consultant, contractor or plan professional may intimidate, threaten, coerce, discriminate against, or take other retaliatory action against individuals for exercising their rights, filing a complaint, participating in an investigation, or opposing any improper practice under HIPAA. No individual shall be required to waive his or her privacy rights under HIPAA as a condition of treatment, payment, enrollment, or eligibility.

IX. Plan Document

The Plan Document shall include a provision to describe the permitted and required uses and disclosures of PHI by the Trust or Plan for plan administrative purposes. Specifically, the Plan Document shall require the Trust to:

- Not use or further disclose PHI other than as permitted by the Plan Document or as required by law;

- Ensure that any agents or subcontractors to whom it provides PHI received from the Plan agree to the same restrictions and conditions that apply to the Trust and Plan;
- Not use or disclose PHI for employment-related actions or in connection with any other employee benefit plan, except for acceptable coordination of benefits purposes;
- Report to the Privacy Official any use or disclosure of information that is inconsistent with the permitted uses or disclosures;
- Make PHI available to Plan participants, consider their amendments to the PHI and, upon request, provide them with an accounting of PHI disclosures;
- Make the Trust's internal practices and records relating to the use and disclosure of PHI received from the Plan available to DHHS upon request; and
- When PHI is no longer needed for the purpose for which the disclosure was made, limit further uses and disclosures of such information and safeguard its keeping.

X. Documentation

The Trust's and Plan's privacy policies and procedures shall be documented and maintained for at least six years. Policies and procedures must be changed as necessary or appropriate to comply with changes in the law, standards, requirements and implementations specifications (including changes and modifications in regulations). Any changes to policies and procedures must be promptly documented.

If a change in law impacts the privacy notice, Notice of Privacy Practices must promptly be revised and made available to participants. Such change is effective only with respect to PHI created or received after the effective date of the notice.

The Trust and Plans shall document certain events and actions (including authorizations, requests for information, sanctions, and complaints) relating to an individual's privacy rights. The documentation of any policies and procedures, actions, activities, and designations may be maintained in either written or electronic form. Covered entities must maintain such documentation for at least six years.

Policies on Use and Disclosure of PHI

I. Use and Disclosure Defined

The Trust and Plan will use and disclose PHI only as permitted under HIPAA. The terms "use" and "disclosure" are defined as follows:

- “Use”—The sharing, employment, application, utilization, examination, or analysis of individually identifiable health information by any person working for or within the ASEA/AFSCME Local 52 Board of Trustees or Trust Administrator’s Office, or by a Business Associate of the Trust and Plan.
- “Disclosure”—For information that is PHI, disclosure means any release, transfer, provision of access to, or divulging in any other manner individually identifiable health information to persons not employed by or working within the Board of Trustees or Trust Administrator’s Office.

**II. Permitted Uses and Disclosures:
Payment and Health Care Operations**

PHI may be disclosed for the Plan’s own payment purposes, and PHI may be disclosed to another covered entity for the payment purposes of that covered entity.

“Payment” includes those activities undertaken to obtain Plan contributions or to determine or fulfill the Plan’s responsibility for provision of benefits under the Plan, or to obtain or provide reimbursement for health care. Payment also includes:

- eligibility and coverage determinations including coordination of benefits and adjudication or subrogation of health benefit claims;
- risk adjusting based on enrollee status and demographic characteristics; and
- billing, claims management, collection activities, obtaining payment under a contract for reinsurance (including stop-loss insurance and excess loss insurance), and related health care data processing.

PHI may be disclosed for purposes of the Plan’s own health care operations. PHI may be disclosed to another covered entity for purposes of the other covered entity’s quality assessment and improvement, case management, or health care fraud and abuse detection programs, if the other covered entity has (or had) a relationship with the participant and the PHI requested pertains to that relationship. “Covered entities” include health plans, health care clearinghouses (certain entities that process or facilitate the processing of health information), and health care providers that conduct certain types of transactions in electronic form.

“Health Care Operations” means any of the following activities to the extent that they are related to Plan administration:

- conducting quality assessment and improvement activities;
- reviewing health plan performance;
- underwriting and premium rating;

- conducting or arranging for medical review, legal services, and/or auditing functions;
- business planning and development; and
- business management and general administrative functions.

III. No Disclosure of PHI for Non-Health Plan Purposes

PHI may not be used or disclosed for payment or operations that are not related to the health benefits offered through the Trust unless the participant has authorized such disclosure in writing (as discussed in Disclosures Pursuant to an Authorization, below), or such use or disclosure is required by applicable state law and a particular requirement under HIPAA is met. Such non-health benefits purposes include disability, workers' compensation, life insurance, etc.

IV. Mandatory Disclosures of PHI: to Individuals and DHHS

A participant's PHI must be disclosed as required by HIPAA in two situations:

1. The disclosure is to the individual who is the subject of the information (see "Access to Protected Information and Requests for Amendment" below; and
2. The disclosure is made to DHHS for purposes of enforcing HIPAA.

V. Permissive Disclosures of PHI: for Legal and Public Policy Purposes

PHI may be disclosed in the following situations without a participant's authorization, when specific requirements are met. Subject to the Privacy Official confirming the legitimacy of the request, and the authority of the requesting party, permitted disclosures are:

- about victims of abuse, neglect, or domestic violence;
- for judicial and administrative proceedings;
- for law enforcement purposes;
- for public health activities;
- for health oversight activities;
- about decedents;
- for cadaveric organ, eye, or tissue donation purposes;
- for certain limited research purposes;
- to avert a serious threat to health or safety;
- for specialized government functions; and
- those that relate to workers' compensation programs.

VI. Disclosures of PHI Pursuant to an Authorization

PHI may be disclosed for any purpose if an authorization that satisfies all of HIPAA's requirements for a valid authorization is provided by a participant. All uses and disclosures

made pursuant to a signed authorization must be consistent with the terms and conditions of the authorization.

VII. Complying with the Minimum Necessary Standard

HIPAA requires that when PHI is used or disclosed, the amount disclosed generally must be limited to the minimum necessary to accomplish the purpose of the use or disclosure. The minimum necessary standard does not apply to any of the following:

- uses or disclosures made to the individual;
- uses or disclosures made pursuant to a valid authorization;
- uses or disclosures made to the DOL or DHHS;
- uses or disclosures required by law; and
- uses or disclosures required by HIPAA.

All disclosures must be reviewed by the Privacy Official to ensure that the amount of information disclosed is the minimum necessary to accomplish the purpose of the disclosure, except those that are permitted for payment and health care operations.

VIII. Disclosures of PHI to Business Associates

PHI may be disclosed to the Trust's Business Associates and allow the Trust's Business Associates to create or receive PHI on its behalf. However, prior to doing so, the Trust must first obtain assurance from the Business Associate that it will appropriately safeguard the information. Before sharing PHI with outside consultants or contractors who meet the "Business Associate" definition, a Business Associate contract must be in place, or if the contract falls within the one-year extension for Business Associate contracts in place and not renewed prior to October 2002, then the Business Associate must have otherwise assured the Trust of its compliance with HIPAA privacy standards.

A "Business Associate" is an entity that (1) performs or assists in performing a Plan function or activity involving the use and disclosure of protected health information (including claims processing and administration, data analysis, underwriting, etc.), or (2) provides legal, accounting, actuarial, consulting, data aggregation, or financial services, where the performance of such services involves giving the service provider access to PHI.

IX. Disclosures of De-Identified Information

The Trust may freely use and disclose de-identified information. De-identified information is health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual. There are two ways a covered entity can determine that information is de-identified: either by a professional statistical analysis or by removing 18 specific identifiers.

Policies on Individual Rights

I. Access to Protected Information and Requests for Amendment

HIPAA gives participants the right to access and obtain copies of their PHI that the Trust (or its Business Associates) maintains in designated record sets. HIPAA also provides that participants may request to have their PHI amended. The Trust will provide access to PHI and consider requests for amendment that are submitted in writing by participants and that are adequately documented.

A "Designated Record Set" is a group of records maintained by or for the Trust that includes the enrollment, payment, and claims adjudication record of an individual, or other PHI used, in whole or in part, by the Trust and Plan(s) offered through the Trust to make coverage decisions about an individual.

II. Accounting

An individual has the right to obtain an accounting of certain disclosures of his or her PHI. This right to an accounting extends to disclosures made in the last six years, or since the inception of the Trust and Plans, whichever is less, other than disclosures:

- to carry out treatment, payment, or health care operations;
- to individuals about their own PHI;
- incident to an otherwise permitted use or disclosure;
- pursuant to an authorization;
- for purposes of creation of a facility directory or to persons involved in the patient's care or other notification purposes;
- as part of a limited data set; or
- for other national security or law enforcement purposes.

The Trust shall respond to an accounting request within 60 days of its receipt. If the Trust is unable to respond within 60 days, it may extend the period for response by 30 days, provided the Trust gives notice of the extension (including the reason for the delay and the date that the information is expected to be provided) within the original 60-day period.

The accounting must include the date of the disclosure, the name of the receiving party, a brief description of the information disclosed, and a brief statement of the purpose of the disclosure (or a copy of the written request for disclosure, if any). The first accounting within any 12-month period shall be provided free of charge. The Privacy Official may impose reasonable production and mailing costs for subsequent accountings.

III. Requests for Alternative Communication Means or Locations

Participants may request to receive communications regarding their PHI by alternative means or at alternative locations. For example, participants may request to be called only at work. Such requests may be honored, if, in the sole discretion of the Privacy Official, they are determined to be reasonable. However, the Trust shall accommodate such a request if the participant clearly provides information that the disclosure of all or part of that information could endanger the participant. In such a situation, the Privacy Official has the responsibility for administering requests for confidential communications.

IV. Requests for Restrictions on Uses and Disclosures of PHI

A participant may request restrictions on the use and disclosure of the participant's PHI. It is the Trust's policy to attempt to honor such requests, if, in the sole discretion of the Privacy Official, the requests are determined to be reasonable.

This Policy is adopted this December 9th, 2004, replaces any previously adopted versions, and is effective until revoked, revised, or amended.

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