

Spelman College

Health Care Flexible Spending Accounts

Use and Disclosure Procedures for PHI

I. Introduction

The Plan may Use and Disclose PHI in accordance with the Privacy Rule, the Plan's Privacy Policy, and these specific procedures for Uses and Disclosures. Unless otherwise indicated, all capitalized terms shall have the meaning set forth in the Plan's Privacy Policy of which these procedures are a part.

To the fullest extent practicable, Workforce members shall ensure that the Plan's Business Associates handle Uses and Disclosures of PHI on behalf of the Plan. The extent that is not practicable, Workforce members may Use and Disclose PHI in accordance with the following procedures.

II. Payment and Healthcare Operations

Uses and Disclosures for Plan's Own Payment Activities or Health Care Operations. The Plan may Use and Disclose PHI to perform the Plan's own payment activities or health care operations. Disclosures may be made under the following procedures:

- ❑ Disclosures must comply with the "Minimum-Necessary Standard" at Part X.

Disclosures for Another Covered Entity's Payment Activities. The Plan may disclose PHI to another Covered Entity to perform the other entity's payment activities. Disclosures may be made under the following procedures:

- ❑ Disclosures must comply with the "Minimum-Necessary Standard" at Part X

Disclosures for Certain Health Care Operations of the Receiving Entity: The Plan may disclose PHI for purposes of another 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 individual and the PHI requested pertains to that relationship. Such disclosures are subject to the following:

- ❑ If a Workforce member is making the Disclosure in lieu of a Business Associate, the Disclosure must be approved by the Privacy Official.
- ❑ Disclosures must comply with the "Minimum-Necessary Standard" under Part X.
- ❑ Disclosures must be documented in accordance with the procedure for "Documentation Requirements" at Part XI.

Use or Disclosure for Purposes of Non-Health Benefits. Unless an authorization from the individual (as discussed in "Disclosures Pursuant to an Authorization" Part V) has been received, the Plan may not use PHI for the payment or operations of the Company's "non-health" benefits (e.g., disability, worker's compensation, and life insurance). If the Company requires a participant's PHI for the payment or health care operations of non-Plan benefits, the Plan must follow these steps:

- ❑ Obtain an Authorization. First, contact the Privacy Officer or Business Associate to determine whether an authorization for this type of use or disclosure is on file. If no form is on file, request an appropriate form from the Privacy Officer. *Workforce members shall not attempt to draft authorization forms.* All authorizations for use or disclosure for non-Plan purposes must be on a form provided by (or approved by) the Privacy Officer.
- ❑ If a Workforce member is making the disclosure in lieu of a Business Associate, the disclosure must be approved by the Privacy Officer.
- ❑ Disclosures must comply with the “Minimum-Necessary Standard” at Part X.
- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” at Part XI.

Questions? Any Workforce member who is unsure as to whether a task he or she is asked to perform qualifies as a payment activity or a health care operation of the Plan should contact the Privacy Officer.

III. Mandatory Disclosures of PHI: to Individuals and DHHS

Request From Individual. Upon receiving a request from an individual (or an individual’s representative) for disclosure of the individual’s own PHI, the Plan must follow the procedure for “Disclosures of PHI Pursuant to an Authorization” under Part V.

Request From DHHS. Upon receiving a request from a Department of Health and Human Services Official for disclosure of PHI, the Plan must take the following steps:

- ❑ Follow the procedures for verifying the identity of a public official set forth in “Verification of Identity of Those Requesting Protected Health Information” under Part IX.
- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” under Part XI.

IV. Permissive Disclosures of PHI When Additional Requirements Are Met

The Plan may Disclose PHI for the purposes described below under in accordance with the following procedures: If the Disclosure is made by a Workforce member in lieu of a Business Associate, the Disclosure must be approved by the Privacy Officer.

- ❑ Follow the procedures for verifying the identity of a public official set forth in “Verification of Identity of Those Requesting Protected Health Information” at Part IX.
- ❑ Disclosures must comply with the “Minimum-Necessary Standard” at Part X.
- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” at Part XI.

1. *Disclosures about victims of abuse, neglect or domestic violence*, if the following conditions are met:

The individual agrees with the Disclosure; or

The Disclosure is expressly authorized by statute or regulation and the Disclosure prevents harm to the individual (or other victim) or the individual is incapacitated and unable to agree and information will not be used against the individual and is

necessary for an imminent enforcement activity. In this case, the individual must be promptly informed of the Disclosure unless this would place the individual at risk or if informing would involve a personal representative who is believed to be responsible for the abuse, neglect or violence.

2. *To For Judicial and Administrative Proceedings*, in response to:

An order of a court or administrative tribunal (Disclosure must be limited to PHI expressly authorized by the order); and

A subpoena, discovery request or other lawful process, not accompanied by a court order or administrative tribunal, upon receipt of assurances that the individual has been given notice of the request, or that the party seeking the information has made reasonable efforts to receive a qualified protective order.

3. *To a Law Enforcement Official for Law Enforcement Purposes*, under the following conditions:

Pursuant to a process and as otherwise required by law, but only if the information sought is relevant and material, the request is specific and limited to amounts reasonably necessary, and it is not possible to use de-identified information.

Information requested is limited information to identify or locate a suspect, fugitive, material witness or missing person.

Information about a suspected victim of a crime (1) if the individual agrees to disclosure; or (2) without agreement from the individual, if the information is not to be used against the victim, if need for information is urgent, and if disclosure is in the best interest of the individual.

Information about a deceased individual upon suspicion that the individual's death resulted from criminal conduct.

Information that constitutes evidence of criminal conduct that occurred on the Company's premises.

4. *To Appropriate Public Health Authorities for Public Health Activities*.

5. *To a Health Oversight Agency for Health Oversight Activities*, as authorized by law.

6. *To a Coroner or Medical Examiner About Decedents*, for the purpose of identifying a deceased person, determining the cause of death or other duties as authorized by law.

7. *For Cadaveric Organ, Eye or Tissue Donation Purposes*, to organ procurement organizations or other entities engaged in the procurement, banking, or transplantation of organs, eyes or tissue for the purpose of facilitating transplantation.

8. *For Certain Limited Research Purposes*, provided that a waiver of the authorization required by HIPAA has been approved by an appropriate privacy board.

9. *To Avert a Serious Threat to Health or Safety*, upon a belief in good faith that the use or disclosure is necessary to prevent a serious and imminent threat to the health or safety of a person or the public.

10. *For Specialized Government Functions*, including disclosures of an inmates' PHI to correctional institutions and disclosures of an individual's PHI to authorized federal officials for the conduct of national security activities.

11. *For Workers' Compensation Programs*, to the extent necessary to comply with laws relating to workers' compensation or other similar programs.

V. Disclosures of PHI Pursuant to an Authorization

Disclosure Pursuant to Individual Authorization. The Plan may disclose PHI to a third party (i.e., not the individual to whom the PHI pertains) for a purpose that does not fall within one of the categories for which disclosure is permitted or required under these Use and Disclosure Procedures, but only if the Plan first obtains the written authorization of the individual to whom the PHI pertains. If Disclosure pursuant to an authorization is requested, the Plan should follow these procedures:

- ☐ Follow the procedures for verifying the identity of the individual (or individual's representative e) set forth in "Verification of Identity of Those Requesting Protected Health Information" at Part IX

- ☐ Verify that the authorization form is valid. Valid authorization forms are those that:

Are properly signed and dated by the individual or the individual's representative;

Are not expired or revoked [the expiration date of the authorization form must be a specific date (such as July 1, 2003) or a specific time period (e.g., one year from the date of signature), or an event directly relevant to the individual or the purpose of the use or disclosure (e.g., for the duration of the individual's coverage)];

Contain a description of the information to be used or disclosed;

Contain the name of the entity or person authorized to Use or Disclose the PHI;

Contain the name of the recipient of the use or disclosure;

Contain a statement regarding the individual's right to revoke the authorization and the procedures for revoking authorizations; and

Contain a statement regarding the possibility for a subsequent re-disclosure of the information.

- ☐ All uses and disclosures made pursuant to an authorization must be consistent with the terms and conditions of the authorization.
- ☐ Disclosures must be documented in accordance with the procedure for "Documentation Requirements" under Part XI.

VI. Disclosure of PHI to Business Associates

- ☐ All Uses and Disclosures by a Business Associate must be made in accordance with a valid Business Associate agreement.

- ❑ Before providing PHI to a Business Associate, Workforce members must contact the Privacy Official and verify that a Business Associate agreement is in place.
- ❑ Disclosures must be consistent with the terms of the Business Associate agreement.
- ❑ Disclosures must comply with the “Minimum Necessary Standard” under Part X.

VII. Disclosure of PHI to Spouses, Family Members, and Friends

The Plan will generally require an authorization signed by the individual who is the subject to the PHI before the Plan will Disclose that individual's PHI to the individual's spouse, family members or friends. There are two exceptions noted below:

Parents and Authorized Representatives. If the Plan receives a request for Disclosure of an individual's PHI from a spouse, family member, or personal friend of an individual, and the spouse, family member, or personal friend is either (1) the parent of the individual and the individual is a minor child; or (2) the personal representative of the individual, then:

- ❑ Follow the procedure for “Verification of Identity of Those Requesting Protected Health Information” in Part IX.
- ❑ Once the identity of a parent or personal representative is verified, then follow the procedure for “Request for Individual Access” under Part II of Exhibit D.

EOBs. The Plan may Disclose PHI in an Explanation of Benefits (“EOB”) regarding a Plan participant's dependent to the participant, provided the EOB does not contain medical diagnoses and the dependent has not made a confidential information request under Part V of Exhibit D.

VIII. Disclosures of De-Identified Information

The Plan may freely Use and Disclose de-identified information. Health information is de-identified if it does not contain any of the specific identifiers set forth at Exhibit J.

IX. Verification of Identity and Authority of Those Requesting Protected Health Information

The Plan must take steps to verify the identity of individuals who request access to PHI. It must also verify the authority of any person to have access to PHI, if the identity or authority of such person is not known. Separate procedures are set forth below for verifying the identity and authority, depending on whether the request is made by the individual, a parent seeking access to the PHI of his or her minor child, a personal representative, or a public official seeking access.

Request Made by Individual. When an individual requests access to his or her own PHI, the Plan should follow the following steps:

- ❑ Request a form of identification from the individual. The Plan may rely on a valid drivers license, passport or other photo identification issued by a government agency.
- ❑ Verify that the identification matches the identity of the individual requesting access to the PHI. If a Business Associate or Workforce member has any doubts as to the validity or authenticity of the identification provided or the identity of the individual requesting access to the PHI, contact the Privacy Officer.
- ❑ Make a copy of the identification provided by the individual and file it with the individual's Designated Record Set.

- ❑ If the individual requests PHI over the telephone, [insert what sort of code Plan will use to know it is the individual].
- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” at Part XI.

Request Made by Parent Seeking PHI of Minor Child. When a parent requests access to the PHI of the parent’s minor child, the Plan should follow the following steps:

- ❑ Seek verification of the person’s relationship with the child. Such verification may take the form of confirming enrollment of the child in the parent’s plan as a dependent. [Insert information about relevant state law; in some circumstances, access by a parent may be denied if state law forbids access.]
- ❑ Disclosures must be documented in accordance with the procedure “Documentation Requirements” at Part XI.

Request Made by Personal Representative. When a personal representative requests access to an individual’s PHI, the Plan should follow the following steps:

- ❑ Require a copy of a valid power of attorney [or other documentation – requirements may vary state-by state]. If there are any questions about the validity of this document, seek review by the Privacy Officer.
- ❑ Make a copy of the documentation provided and file it with the individual’s Designated Record Set.
- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” at Part XI.

Request Made by Public Official. If a public official requests access to PHI, and if the request is for one of the purposes set forth above in “Mandatory Disclosures of PHI” or “Permissive Disclosures of PHI,” the following steps should be followed to verify the official’s identity and authority):

- ❑ If the request is made in person, request presentation of an agency identification badge, other official credentials, or other proof of government status. Make a copy of the identification provided and file it with the individual’s Designated Record Set.
- ❑ If the request is in writing, verify that the request is on the appropriate government letterhead;
- ❑ If the request is by a person purporting to act on behalf of a public official, request a written statement on appropriate government letterhead that the person is acting under the government’s authority or other evidence or documentation of agency, such as a contract for services, memorandum of understanding, or purchase order, that establishes that the person is acting on behalf of the public official.
- ❑ Request a written statement of the legal *authority* under which the information is requested, or, if a written statement would be impracticable, an oral statement of such legal authority. If the individual’s request is made pursuant to legal process, warrant, subpoena, order, or other legal process issued by a grand jury or a judicial or administrative tribunal, contact the Plan’s legal counsel.
- ❑ If a Workforce member makes the Disclosure in lieu of a Business Associate, the Workforce member should obtain approval for the disclosure from the Privacy Official.

- ❑ Disclosures must be documented in accordance with the procedure for “Documentation Requirements” at Part XI.

X. Complying With the “Minimum-Necessary” Standard

All Requests and Disclosures for PHI shall comply with the Plan’s policy for complying with the Minimum-Necessary Standard set forth in Article VI.I. of the Plan’s Privacy Policy.

XI. Documentation

The Plan shall maintain copies of all of the following items for a period of at least six years from the date the documents were created or were last in effect, whichever is later:

- ❑ “Notices of Privacy Practices” that are issued to participants.
- ❑ When a Disclosure of PHI is made:
 - the date of the Disclosure-;
 - the name of the entity or person who received the PHI and, if known, the address of such entity or person;
 - a brief description of the PHI Disclosed;
 - a brief statement of the purpose of the Disclosure; and
 - any other documentation required under these Use and Disclosure Procedures.
- ❑ **Exceptions**. Disclosures of PHI do not need to be documented if the Disclosure is for one or more of the following purposes:
 - to carry out payment or health care operations;
 - to the individual;
 - to DHHS;
 - pursuant to an authorization;
 - to correctional institutions or law enforcement when the disclosure was permitted without an authorization; and
 - as part of a limited data set.
 - for national security or intelligence purposes; and
 - disclosures that occurred by to the effective date of these policies and procedures.

XII. Mitigation of Inadvertent Disclosures of PHI

The Privacy Rule requires that the Plan mitigate, to the extent possible, any harmful effects that become known to the Plan of a Use or Disclosure of an individual’s PHI in violation of these policies and procedures. As a result, if a Business Associate or Workforce member becomes aware of a Disclosure of

PHI, either by a Workforce member or a Business Associate that is not in compliance with these policies and procedures, immediately contact the Privacy Officer so that the appropriate steps to mitigate the harm to the individual can be taken. Examples of appropriate steps include (i) contacting the person or entity to whom the information was Disclosed and requesting its return or destruction, and (ii) taking appropriate measures to prevent a repeat Disclosure, including additional Workforce training and/or sanctioning Workforce members in accordance with the Privacy Policy.