IV.

NOTICE OF PRIVACY PRACTICES

EFFECTIVE: APRIL 14, 2003
AMENDED: JANUARY 1, 2009
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IV.

NOTICE OF PRIVACY PRACTICES

4.1 BACKGROUND

The Privacy Rule states that, subject to narrow exceptions:

“[a]n individual has a right to adequate notice of the uses and disclosures of protected health information that may be made by the covered entity, and the individual’s rights and the covered entity’s legal duties with respect to Protected Health Information.” (§ 164.520).

This requires group health plans to create a Notice of Privacy Practices comprehensively describing privacy practices and individual rights.

4.1.1 Content of the Notice

If a Plan is required to provide a Notice, it must comply with the following:

a. The Notice must be written in plain language.

b. The Notice must comprehensively describe the uses and disclosures that the Plan may make of an individual’s Protected Health Information. The range of potential uses and disclosures is framed within the Privacy Rule itself. A Plan may not use or disclose Protected Health Information in ways not described in the Notice. Thus, a Group Health Plan must be careful to describe the maximum range of uses and disclosures, within the limits set by HIPAA, in order to have maximum flexibility in using and disclosing PHI.

c. The Notice must contain a description and at least one example of each type of use or disclosure for treatment, payment or health care operations. For other uses and disclosures, the Notice must merely contain a description.

d. The description of uses and disclosures:

“Must include sufficient detail to place the individual on notice of the uses and disclosures that are permitted or required by this subpart and other applicable law.”

e. If the Plan or its TPA, health insurance issuer or HMO or their agents, may disclose PHI to the Plan Sponsor, the Notice must describe this type of disclosure.

f. The Notice must describe an individual’s rights and how those rights may be exercised. Where the Plan is administered by a TPA, health insurance issuer or HMO, or their agents, this requires care to be sure that the individual is directed to the appropriate place to exercise rights.

g. The Notice must tell individuals that the Plan is bound by the Notice and must revise the Notice before changing its practices. This underscores the importance of making certain that the Notice adequately describes the full range of uses and disclosures the Plan is permitted to make.
h. The Notice must contain a statement that individuals may complain to the Plan and to the Secretary of the Department of Health and Human Services if they believe their privacy rights have been violated, together with a brief description of how to exercise those rights.

i. The Notice must contain the name or title and telephone number of a person or office to contact for further information about the Plan’s privacy practices.

j. The Notice must reflect the date it became effective.

There are additional required elements that have been included in the Notice later in this section.

4.1.2 Fully-Insured Plans

The Notice burden of a fully-insured plan depends on what Protected Health Information the Plan receives from the health insurance issuer or HMO.

If the Plan does not receive any Protected Health Information from the health insurance issuer or HMO, other than Summary Health Information or Enrollment/Disenrollment Information, the Plan is not required to create, distribute or post a Notice. However, if that same Plan does receive Protected Health Information other than Summary Health Information or Enrollment/Disenrollment Information, it must:

a. Create and maintain a Notice.

b. Provide the Notice upon request to any person. The distribution is limited to requests – the Plan is not required to distribute the Notice to enrollees prior to the Compliance Date or at any other fixed intervals.

4.1.3 Self-Funded Plans

All self-funded Group Health Plans are required to create, maintain, distribute and post on the Plan’s or the Plan Sponsor’s website its currently-effective Notice. Distribution and posting requirements are described in the instructions.

Note – the Plans must create, distribute and post the individual Notice or joint Notice (in the case of Plans participating in an Organized Health Care Arrangement) regardless of whether the TPA also creates, distributes and posts its Notice.
4.2 INSTRUCTIONS

4.2.1 Covered Parties

Confirm that:

a. Each Group Health Plan covered by this Manual and named in Part I as participating in the Organized Health Care Arrangement is named and included in the joint Notice.

b. Each other Group Health Plan is included in a Notice, even if not the joint Notice, by that Plan’s Compliance Date.

4.2.2 Descriptions and Content

Confirm on behalf of each Group Health Plan named in the joint Notice that:

a. The description of uses, disclosures and privacy practices of each Plan named in the joint Notice are accurately and inclusively described.

b. The contact person information and the means to exercise individual rights are stated.

c. The Plan Representative to whom questions should be directed is identified.

d. Disclosures which the Plan or its TPA, insurer or HMO, or their agents, may make to the Plan Sponsor are described.

Confirm that the description of use and disclosure and the privacy practices of the participating Plans are sufficiently similar that they can be effectively administered jointly through an Organized Health Care Arrangement.

4.2.3 Coordination with TPA

The Notice is drafted to reflect that it is the TPA, not the Plans or Plan Representatives, which will create, maintain, use and disclose Protected Health Information to administer the Plans and conduct Plan operations. Therefore, individual rights need to be exercised through the TPA.

a. Confirm that the assumption is correct; that the Plans and Plan Representatives will not have Protected Health Information or designated record sets and will not have the means to conduct and implement individual rights on their own.

b. Confirm that the TPA will conduct individual rights as described in the Notice. Furnish a copy of the Notice to the TPA. Confirm the contact information. Assure that the TPA must notify the Plan before changing information that will require a change in the Plan’s Notice.

c. The ultimate obligation to respect rights rests with each Plan as a covered entity under HIPAA. Make certain that the agreement with the TPA obligates the TPA to conduct individual rights in a manner that discharges such Plan’s obligation.
Note that in unusual situations, it may be necessary for such Plan to take direct steps to conduct individual rights if the TPA cannot or will not do so.

4.2.4 Distribution of Notice

Notice covering each self-funded Group Health Plan must be distributed as follows:

a. No later than the Compliance Date to individuals who are then covered by the Plan.

b. Thereafter, at the time individuals enroll in the Plan.

c. Within sixty (60) days of a material revision to the Notice, to all Covered Persons then covered by the Plan.

d. Additionally, no less frequently than once every three (3) years, the Plan must notify Covered Persons of the availability of the Notice and how they can obtain the Notice.

e. Distribution of the Notice is sufficient if it is provided to the named enrollee or insured.

f. Multiple Group Health Plans participating in the Organized Health Care Arrangement and sharing common information practices and a common Notice of Privacy Practices may satisfy their notice obligation by creating, posting and distributing a joint Notice.

4.2.5 Posting

A copy of the Notice must be posted on any website maintained by the Plan Sponsor in an area devoted to the Group Health Plans sponsored by such Plan Sponsor if the Plan Sponsor maintains a website.

4.2.6 Request

The Notice shall also be distributed to any named enrollee or insured or to any person who contacts the Privacy Officer and requests a copy.

4.2.7 Revisions

The Plan must revise the Notice before revising a practice described in the Notice. The Notice must reflect the effective date of each sequential version. If the revision is deemed material by the Privacy Officer, a revised version must be mailed to each named enrollee. Whether revisions are deemed material or not, a revised Notice shall be substituted for the prior Notice in any website posting, in any site of service postings, and as the version distributed to new enrollees or individuals who request a copy.
4.2.8 Documentation

The Plans must document all mailings, distributions and postings, together with all policies under which the mailings, distributions and postings occur. Plans must document all versions of the Notice. This documentation is part of the Plans’ required HIPAA documentation.
NOTICE OF PRIVACY PRACTICES
OF
CERTAIN GROUP HEALTH PLANS
SPONSORED BY
OMAHA PUBLIC SCHOOLS

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

Each group health plan in which you participate is required by federal law to maintain the privacy of your personal health information. Each Plan is also required to give you a Notice which describes its privacy practices, its legal duties and your rights concerning such information. This is the required privacy Notice of the following group health plan sponsored by OPS (the “Plan Sponsor”):

Omaha Public Schools Flexible Spending Plan (Medical Reimbursement)

referred to in this Notice as (“the Plan”).

USES AND DISCLOSURES OF YOUR INFORMATION

The Plan or its agents create, maintain, use and disclose health information about you in order to administer the Plan and pay benefits. Health information includes medical information about your diagnosis or treatment, insurance information, and health care claims and payment information. The following are the types of uses and disclosures the Plan may make of your health information without your authorization. Where State or federal law restricts one of the described uses or disclosures, we follow the requirements of such State or federal law. The following are general descriptions only. They do not cover every example of disclosure within a category.

Payment. The Plan will use and disclose your health information as necessary for payment purposes. For example, the Plan may use and disclose your health information to reimburse you for claims from doctors, hospitals and other providers for services delivered to you that are covered by your Plan, to determine your eligibility for benefits, to determine whether services are medically necessary or to pre-authorize or certify services as covered under your plan of benefits.

Health Care Operations. The Plan will use and disclose your health information as necessary, and as permitted by law, for the Plan's health care operations. For example, the Plan may use and disclose your medical information to conduct quality improvement activities or to engage in care coordination.

Business Associates. Some functions, such as auditing or Plan Administration Functions, are performed on behalf of the Plan by outside parties called “Business Associates.” The Plan will furnish health information to Business Associates, or permit them to create health information involving you, in order to perform these functions. Contracts with Business Associates will require them to appropriately safeguard the privacy of your health information.

Disclosures to Plan Sponsor for Payment and Health Care Operations. In order to administer the Plan, the TPA will tell the Plan Sponsor how and when to fund the Plan. To do this the TPA will tell the Plan Sponsor how much the Plan Sponsor must debit each Covered Person's account in order to transfer funds to the TPA so that the TPA can pay or reimburse you for claims you present. The TPA will tell the Plan Sponsor “how much,” but will not tell the Plan Sponsor
details of claims you present, such as the name of the provider, the type of provider or the type of covered service you received.

**Disclosures to Plan Sponsor for Advocacy.** Occasionally Covered Persons ask the Plan Sponsor to assist in determining the status of claims or to help resolve misunderstandings with the TPA. These activities are called "advocacy." The Plan Sponsor, in its role as your employer, is willing to provide limited advocacy at your request. The TPA may disclose health information to the Plan Sponsor in this role, but will usually first request your authorization to do so.

**Disclosures to Plan Sponsor for Appeals.** If the Plan Sponsor has contracted with a third party, other than the TPA, to hear appeals that cannot be resolved between the Covered Person and the TPA, this third party will have been instructed not to disclose health information to the Plan Sponsor in connection with its appeal activity.

**Family or Representatives.** The Plan may disclose health information to family members or others who are involved in your care or payment for your care to facilitate that person's involvement in caring for you or paying for your care. If you are present, the Plan will give you the opportunity to object before it makes such disclosures. If you are unavailable, incapacitated or are in an emergency situation, the Plan may disclose limited information to these persons if the Plan determines disclosure is in your best interest.

**Deceased Individuals.** The Plan may disclose the health information of a deceased individual to a coroner, medical examiner or funeral director to carry out their duties as allowed by law.

**Law Enforcement.** The Plan may disclose your health information to law enforcement authorities for law enforcement purposes, such as in response to a court order, subpoena, warrant, summons or similar process. The Plan must comply with federal and State laws in making such disclosures.

**Public Health Activities.** The Plan may disclose medical information about you for public health activities. These activities may include disclosures to a public health authority authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability; to appropriate authorities authorized to receive reports of child abuse and neglect.

**Legal Proceedings.** If you are involved in a lawsuit or a dispute, the Plan may disclose medical information about you in response to a court or administrative order. The Plan may also disclose medical information about you in response to a subpoena, discovery request or other lawful process by someone else involved in the dispute, but only if reasonable efforts have been made to notify you of the request or to obtain an order from the court protecting the information requested.

**Workers' Compensation.** The Plan may disclose your health information to comply with workers' compensation laws or other similar programs providing benefits for work-related injuries.

**Health Oversight Activities.** The Plan may disclose health information to a health oversight agency for activities authorized by law. These oversight activities include, for example, audits, investigations, inspections and licensure. These activities are necessary for the government to monitor the health care system, government programs and compliance with civil rights laws.

**Required by Law.** The Plan will disclose health information about you when required to do so by federal or State law, including disclosures to the U.S. Department of Health and Human Services upon request for purposes of determining the Plan's compliance with federal law.

**You and Your Authorization.** The Plan must disclose your health information to you, as described later in this Notice. You may also give us written authorization to use your health information or to disclose it for any purpose. You may revoke your authorization at any time, but your revocation will not affect any use or disclosure made by the Plan in reliance on your authorization. Without your written authorization, the Plan may not use or disclose your medical information for any reason except those described above.
The Plan contracts with outside administrators (the “Administrator”) to actually administer and operate the Plan. Under the terms of the arrangement, it is the Administrator, not the Plan, which creates, maintains and uses most or all of the Protected Health Information about you. To exercise the individual rights described in this Notice, or to file a complaint, contact:

Service Representative
PayFlex Systems
10802 Farnam, Suite 100
Omaha, Nebraska 68154
800-284-4885

Request for Voluntary Restrictions. You have the right to request a restriction on how we use and disclose your medical information for treatment, payment, health care operations, or to certain family members or friends identified by you who are involved in your care or the payment for your care. We are not required to agree to your request, and will notify you if we are unable to agree.

Access to Medical Information. You may request to inspect and copy much of the medical information we maintain about you, with some exceptions. If you request copies, we may charge you a copying fee plus postage. If we agree to prepare a summary of your medical information, we may charge a fee to prepare the summary.

Amendment. You may request that we amend certain medical information that we keep in your records. We are not required to make all requested amendments, but will give each request careful consideration. If we deny your request, we will provide you with a written explanation of the reasons and your rights.

Accounting. You have the right to receive an accounting of certain disclosures of your medical information made by us or our Business Associates. The first accounting in any 12-month period is free; you may be charged a fee for each subsequent accounting you request within the same 12-month period.

Confidential Communications. You may request that we communicate with you about your medical information in a certain way or at a certain location. The Plan is required to accommodate reasonable requests if you inform the Plan that disclosure of all or part of your information could place you in danger, specifies the alternative means or location and continues to permit the Plan to collect premiums and pay claims under your health plan, including issuance of explanation of benefits to the subscriber of Plan in which you participate.

Complaints. If you have concerns about any of the Plan's privacy practices or believe that your privacy rights may have been violated, you may file a complaint with the Plan using the contact information at the beginning of this section. You may also submit a written complaint to the U.S. Department of Health and Human Services. The Plan supports your right to protect the privacy of your health information. Neither the Plan nor the Plan Sponsor will retaliate in any way if you chose to file a complaint with the Plan or with the U.S. Department of Health and Human Services.

ABOUT THIS NOTICE

The Plan is required to abide by the terms of the Notice currently in effect. The Plan reserves the right to change the terms of this Notice and to make the new Notice provisions effective for all of your personal health information that it maintains, including that which it created or received while the prior Notice was in effect. If the Plan makes a material change to its privacy practices, it will revise this Notice and provide you with a copy of the revised Notice.
CONTACT INFORMATION

PRIVACY OFFICER: For questions about this Notice, or if a matter cannot be resolved by contacting the Administrator's representative, contact the Plan's Privacy Officer at:

Privacy Officer
OPS Flexible Benefit Plan
Compensation and Benefits Office
Omaha Public Schools
3215 Cuming Street
Omaha, NE 68131
402-557-2156

EFFECTIVE DATE OF NOTICE: April 14, 2004