

III. HIPAA OVERVIEW

The Health Insurance Portability and Accountability Act (HIPAA) was passed by Congress in 1996. Its original version mandated enhanced portability of employer-based health insurance for individuals changing jobs and made reference to future requirements regarding administrative simplification (common data code sets), privacy, and security. The federal Department of Health and Human Services, Office of Civil Rights is the governing entity with regard to HIPAA regulations while penalty enforcement is conducted through the federal Department of Justice.

1. Privacy

The first segments of HIPAA compliance are the privacy guidelines which protect how Personal Health Information (PHI) is disseminated. RMD has been careful to engineer agreements with vendors to minimize exposure with regard to these requirements.

Most of these functions will be greatly simplified for RMD when compared to a Health Plan, for example. RMD consciously limits access to PHI (mostly in the form of employee appeals) and does not disseminate this information outside of HIPAA guidelines. HIPAA guidelines state that the PHI may be disseminated (to the Health Plan) to facilitate the payment of a claim.

Policies and Procedures related to HIPAA can be found in the forms section of this guide. Please read and familiarize yourself with these policies.

2. Standardized Data Code Sets

The United States Department of Health and Human Services has established standardized ways for all information related to health plan administration to be sent and received electronically. All entities, be they providers, health plans or employers who send information electronically were required to begin using these standardized code sets by October 16, 2003. RMD established a contingency plan to be effective April 2004, and is currently compliant with electronic eligibility transfers to all vendors.

3. Security

RMD continues to work collegially with the State's coordinated efforts for security requirements, along with other sister agencies (DOH, HSD, CYFD, etc).

Privacy Policies and Procedures For
The Risk Management Division, General Services Department
State of New Mexico

Purpose

The purpose of these policies and procedures is to provide formal guidance to employees of the Risk Management Division (RMD) and Erisa Administrative Services, Inc. (Erisa) with regard to the receiving, handling, and disseminating of protected healthcare information (PHI) as it pertains to the administration of health plans.

The primary guiding factor behind these policies and procedures is to ensure that PHI is only used and disseminated appropriately. Specifically, that PHI be used only in the activities related to the administration of the health plans and NOT be disseminated such that the information may be used for other types of personnel decisions such as promotions, terminations, etc.

All policies and procedures of RMD and Erisa are public documents and are to be placed on permanent file with RMD and Erisa and made available upon request.

Scope

These guidelines apply to all RMD and Erisa Administrative Services, Inc. (Erisa) and/or employees engaged in health plan administration who, through the course of their normal duties, may come into contact with PHI.

PHI is defined by Federal Law to be individually identifiable health information transmitted or maintained by a covered entity, regardless of form. As this pertains to RMD and Erisa, PHI will be in the form of employee appeals regarding decisions made by our health plan vendors, or PHI from the vendors themselves. Not all appeals contained PHI, though.

These guidelines apply to benefit plan administrators but there are exceptions for worker's compensation or disability programs, are not subject to the same requirements.

Identification Of Affected Workforce Members

All employees, be they full or part-time, temporary or permanent, of the Employee Benefits Bureau (EBB) may come into contact with PHI and are, therefore, subject to these policies and procedures.

The Deputy Director of RMD, by means of his/her oversight of EBB, may come into contact with PHI and is, therefore, subject to these policies and procedures.

The Director of RMD, by means of his/her oversight of the Division, may come into contact with PHI related to health plan administration and is, therefore, subject to these policies and procedures.

The Cabinet Secretary of the General Services Department, by means of his/her oversight of the Department, may come into contact with PHI related to health plan administration and is, therefore, subject to these policies and procedures.

Any other employee of the State of New Mexico who comes into contact with PHI designated for the use of health plan administration is subject to these policies and procedures.

Acceptance of PHI

PHI, according to law, may be received in any form. This includes paper, emails, faxes, and conversationally (oral).

The source of PHI may only be (1) a plan member seeking assistance in obtaining payment from a health plan for a service or supply or (2) from a business associate assisting RMD in the guidelines. Any such business associates will have in place contractual requirements mandating compliance to the same HIPAA regulations.

Any actionable request must be received in a written format. In other words, if PHI is received orally, it must be followed up with written documentation for any action to be taken.

Upon acceptance, all material containing PHI will be documented in a central location and assigned to a specific individual for disposition.

Handling PHI

PHI, if provided by the member, may be used by the appropriate personnel to assist in making a payment determination.

PHI may not be used in any way to assist in making an eligibility determination. Eligibility requirements have been established without regard to an individual's health status.

Additional PHI may not be requested by RMD from any source other than the member.

Disseminating and/or Disclosure of PHI

PHI shall not be disseminated to other areas of State or Local Government except as provided in the following Exceptions paragraph.

PHI shall not be disseminated to entities outside of State or Local Government except as provided in the following Exceptions paragraph.

PHI shall only be disseminated beyond the assigned individual within RMD in order to facilitate health plan administration. Such dissemination shall only be with and limited to the minimum number of individuals necessary for plan administration.

No PHI shall be disseminated on a routine or recurring basis except as provided in the following Exceptions paragraph.

Members may request to view their own PHI. As outlined, PHI will only be on file at RMD if sent by the member. PHI will only be provided after due diligence is applied to determine requestor's

identity. All other requests for PHI will be denied except as provided in the following Exceptions paragraph.

Exceptions to PHI Dissemination and/or Disclosure

PHI may be disseminated without member consent in the following circumstances:

To facilitate payment with a health plan: If an appeal is received and it is clear that information is received by RMD which was not available to the determining health plan, this information may be disseminated to the health plan for their review and possible payment of denied services. If, after review of an appeal, RMD determines that a service or product should be paid for by the plan, PHI should not be disseminated to the health plan. Once in health plan possession, PHI is subject to published health plan privacy guidelines.

During a health emergency or when you are incapacitated, we will use our professional judgment to decide if sharing your health information is in your best interest.

We will disseminate PHI when required by federal, state or local law.

If law enforcement officials ask, PHI may be disseminated under the following circumstances: to identify or locate a fugitive or missing person, to disclose information about a death RMD believes may be the result of a crime, to disclose information RMD believes may be related to a crime on State of New Mexico property, or as required by a court order, subpoena, warrant, summons or other legal request.

PHI may be disclosed if such disclosure would prevent or lessen a serious and immediate threat to the health or safety of any person or the general public.

PHI may be disclosed with federal officials for national security purposes as authorized by law.

PHI may be disclosed as required by worker's compensation laws.

PHI may be disclosed to the Secretary of the U.S. Department of Health and Human Services (HHS) when HHS requests the health information to determine if we are following privacy law.

Providing Notice of Privacy Practices

Notice of privacy practices shall be communicated to all State Employees upon implementation.

Notice of privacy practices shall include all employee rights afforded under these policies and procedures.

Notice of privacy practices shall be communicated no less than annually thereafter.

Form #12: Employee Notice of Privacy Practices (must be read & signed by employee upon hire)

Risk Management Division – Employee

Notice of Privacy Practices

Many people are worried today about how their personal health information is being used – and with very good reason. Information about your health is a very personal thing and its improper use can leave one feeling violated and victimized. The Risk Management Division (RMD) and Erisa Administrative Services, Inc. (Erisa), are equally concerned. This notice details how your medical information may be used and disclosed as well as how you can gain access to this information.

RMD and Erisa are required by federal law to maintain and protect the privacy of your health information and provide you with notice of its legal duties and privacy practices. If you have any questions regarding this notice or the privacy of your health information, please contact RMD/Erisa at PO Box 6850, Santa Fe, NM 87502-0110, or by telephone at 1-855-618-1800.

When Your Health Information Can Be Used or Disclosed by RMD and Erisa Administrative Services, Inc. (Erisa)

RMD and Erisa have always been aware of the sensitivity of protected (or personal) health information (PHI). As such, RMD/Erisa has limited the amount of PHI it receives in its facilities. In addition, RMD/Erisa has ensured that each of its business associates (i.e. health plans) has committed to the same stringent privacy guidelines in dealing with your PHI.

The following categories describe the ways that RMD and Erisa may use and disclose your PHI.

1. Payment Functions – RMD and Erisa may use or disclose your PHI to facilitate payment for the treatment and services you receive. For example, if you send PHI to RMD as part of an appeal of a health plan decision, RMD may share that PHI with the health plan in order to facilitate the payment of the charges should they be determined to be covered under your plan.
2. Health Care Operations – RMD and Erisa may use or disclose your PHI in order to conduct insurance-related activities. These activities include, but are not limited to, premium ratings, quality assurance processes (audits), fraud and abuse detection and investigation.
3. Legal Requirements / Law Enforcement – RMD and Erisa may use or disclose your PHI, as required by law, in compliance with a court order or subpoena.
4. Public Health / Public Safety – RMD and Erisa may use your PHI to prevent or lessen a serious and immediate threat to the health or safety of any person or the general public.
5. Health Oversight Activities – Your PHI may be disclosed to health oversight agencies, such as the New Mexico Department of Insurance (DOI), during the course of audits,

investigations, inspections or other proceedings related to the oversight of the health care system.

6. Coroners, Medical Examiners and Funeral Directors – RMD and Erisa may disclose your PHI to coroners, medical examiners and funeral directors.
7. Organ and Tissue Donation – RMD and Erisa may disclose your PHI to organizations involved in procuring, banking or transplanting organs and tissues, as necessary.
8. National Security – RMD and Erisa may disclose your PHI for military, national security, prisoner, and government benefits purposes.
9. Worker's Compensation – RMD and Erisa may disclose your PHI, as necessary, to comply with worker's compensation or similar laws.
10. Marketing – RMD and Erisa may use your PHI in order to contact you about health-related benefits and services that may be of interest to you.

When Your Health Information Cannot Be Used or Disclosed by RMD or Erisa

RMD and Erisa Administrative Services, Inc.(Erisa) may not use or disclose your health information without your written authorization, except as designated above in this notice. If you authorize the use PHI by RMD/Erisa for another purpose, you may revoke your authorization in writing at any time. This revocation, however, cannot undo any disclosures that were already made with your permission.

Your Rights Regarding Your Health Information

1. Right to Request Restrictions – You have the right to request restrictions on the way your PHI is used and disclosed in certain situations. RMD and Erisa are not required to agree to the restrictions but will apply them where prudent and reasonable. If you would like to make a request for restrictions, you must do so in writing to RMD at PO Box 6850, Santa Fe, NM 87502-0110.
2. Right to Request Confidential Communications – You have the right to receive your PHI through a reasonable alternative means or at an alternative location for confidentiality purposes. Be sure to include your “alternative location” request in writing to RMD at PO Box 6850, Santa Fe, NM 87502-0110. We are not required to agree to all such requests.
3. Right to Inspect and Copy – You have the right to inspect and copy your PHI that may be used to make decisions about your plan benefits. To inspect and copy such information, you must submit your request in writing to RMD at PO Box 6850, Santa Fe, NM 87502-0110. We may charge you a reasonable fee to cover expenses associated with your request.
4. Right to Request Amendment – You have the right to request that RMD and Erisa amend your PHI that you believe is incorrect or incomplete. Upon review, should RMD/Erisa deny your requested amendment, you will be provided with information about the denial and how

it may be appealed. To request an amendment, please do so in writing to RMD at PO Box 6850, Santa Fe, NM 87502-0110.

- 5. Right to Know to Whom Your PHI Has Been Disclosed – You have a right to receive a list or “accounting of disclosures” of your PHI, with the exception of disclosures made for payment functions or health care operations. To request this accounting, please submit your request in writing to RMD at PO Box 6850, Santa Fe, NM 87502-0110.
- 6. Right to Review This Notice – You have a right to receive a paper copy of this Privacy Notice at any time. To obtain a paper copy of this Notice, send your written request to RMD at PO Box 6850, Santa Fe, NM 87502-0110.

Should you wish to discuss these rights in more detail, or if you would like to exercise one or more of these rights, contact RMD/Erisa at PO Box 6850, Santa Fe, NM 87502-0110 or by telephone at 1-855-618-1800.

Changes to this Notice

RMD reserves the right to amend this Notice of Privacy Practices in the future and to make the new Notice effective for all health information that it maintains. RMD will promptly distribute the new Notice to you whenever a material change is made. Until such time, RMD is required by law to comply with the current version of this Notice.

Complaints

Please direct any complaints about this Notice or about how your PHI is handled, in writing, to RMD at PO Box 6850, Santa Fe, NM 87502-0110. RMD assures you that you will not be retaliated against in any way for filing a complaint. If you believe your privacy rights have been violated, you may file a complaint with the Secretary of the Department of Health and Human Services.

I, the undersigned, have been provided with Risk Management Division’s (RMD) Privacy Policies and Procedures as well as the Privacy Notice provided to our membership. Both documents have been explained to me and I am in full understanding of their spirit and intent.

Furthermore, I understand the importance of maintaining the privacy of our membership and will do so as provided by RMD’s Policies and Procedures. I recognize that a failure to comply with the policies and procedures may result in disciplinary action as determined by RMD’s Privacy Officer.

Employee Signature	Printed Name	Date

Cc: Personnel File
Privacy Officer