

Los Angeles County Retiree Healthcare Program HIPAA Privacy Policy

The County of Los Angeles sponsors the Retiree Healthcare Program (the "Plan"). The Retiree Healthcare Program is a group health plan under HIPAA Rules, and therefore a covered entity under HIPAA. Pursuant to agreements with the County and other participating agencies, the Plan is administered by the Los Angeles County Employees Retirement Association ("LACERA"), and certain LACERA staff are authorized to act on behalf of the Plan for administration purposes. LACERA has certified to the Plan that it has taken the necessary steps to avail itself of the Plan Sponsor Exception to the HIPAA Business Associate Rules, and as such, LACERA is not a Business Associate of the Plan.

The Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended from time to time, and its implementing regulations (collectively, the "HIPAA Rules"), govern the Use and Disclosure of Protected Health Information ("PHI") and Electronic PHI.

Specifically, the HIPAA Rules as set forth in 45 C.F.R. 164.500 *et seq.* set forth privacy requirements for individually identifiable health information transmitted or maintain in any form or medium by a covered entity. When such information is created or received by the covered entity, it becomes PHI.

This policy sets forth the framework for the Plan's compliance with the HIPAA Privacy Rule. This policy is limited to the HIPAA Privacy Rule. Other aspects of law, including, but not limited to the HIPAA Security Rule and the HIPAA Breach Notification Rule, are addressed in other Plan policies. The Plan recognizes that adequate and appropriate security is necessary for the HIPAA Rules to apply and operate as intended.

I. DEFINITIONS. As used in this document, the following capitalized terms shall have the respective meaning given below:

A. Business Associate. An entity or person who performs a function involving the Use or Disclosure of PHI on behalf of a covered entity (such as claims processing, case management, utilization review, quality assurance, billing) or provides services for a covered entity that require the disclosure of PHI (such as legal, actuarial, accounting, accreditation).

B. Disclosure. For information that is PHI, Disclosure means any release, transfer, provision of access to, or divulging in any other manner of individually identifiable health information to persons not employed by or working within the Human Resources Department of the Employer, or not a Business Associate (defined below) of the Plan.

C. Electronic Protected Health Information ("Electronic PHI"). Electronic PHI means PHI that is transmitted by, or maintained in, electronic media.

D. Individual. Individual means the person who is the subject of the health information created, received, maintained, or transmitted by or on behalf of the Plan (or by a Health Insurance Issuer in connection with coverage provided under the Plan).

E. Plan Administration Functions. Plan Administration Functions means administration functions performed by LACERA on behalf of the Plan, generally comprised of activities relating to "payment," as that term is defined in the HIPAA Rules, such as quality assurance, auditing, monitoring, and Plan management (including financial and administrative oversight and HIPAA compliance). Plan Administration Functions subject to this document do not include enrollment functions performed by LACERA in connection with the Plan, or functions performed by LACERA in connection with any other benefit provided by LACERA (such as the pension plan, disability, or life insurance) or any employment-related actions or decisions.

F. Protected Health Information ("PHI"). PHI means information that is created or received by the Plan (or by a Health Insurance Issuer in connection with coverage provided under the Plan) and relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and that identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual. PHI includes information of persons who are living or who have been deceased for less than 50 years. PHI does not include health information about an employee that is held in LACERA's employment records in its role as an employer, or LACERA's member records in its role as retirement plan administrator. PHI includes Electronic PHI.

G. Summary Health Information. Summary Health Information means information (1) that summarizes the claims history, claims expenses, or type of claims experienced by individuals for whom LACERA has provided health benefits under the Plan, and (2) from which the information described at 45 C.F.R. 164.514(b)(2)(i) has been deleted, except that the geographic information described in 45 C.F.R. 164.514(b)(2)(i)(B) need only be aggregated to the level of a five-digit zip code.

H. Use. The sharing, employment, application, utilization, examination, or analysis of PHI by any person working for or within the benefits department of the Employer, or by a Business Associate of the Plan.

II. ADMINISTRATIVE REQUIREMENTS

A. Privacy and Security Official. The Plan hereby designates, as required by 45 C.F.R. 164.530(a)(1), the following Privacy and Security Official who is responsible for the development and implementation of the policies and

procedures required by HIPAA for the Plan and its Business Associates:

Cassandra Smith
Director, Retiree Healthcare
Los Angeles County Employees Association (LACERA)

The Privacy and Security Official is responsible for receiving complaints under Section II.D. of this Policy. The Privacy and Security Official will also be responsible to provide further information about matters covered by the Privacy Notice as required by 45 C.F.R. 164.520.

B. Workforce Training. It is the Plan's policy to train all members of its workforce on its privacy policies and procedures, in accordance with 45 C.F.R. 164.530(b)(1). The Privacy and Security Official is charged with developing training schedules and programs so that all workforce members receive the training necessary and appropriate to permit them to carry out their functions within the Plan in compliance with HIPAA. Such training may be facilitated through LACERA's Privacy and Security Training Program.

C. Privacy Notice. The Privacy and Security Official is responsible for developing and maintaining a notice of the Plan's privacy practices in accordance to 45 C.F.R. 164.520. The Plan will also provide notice of availability of the privacy notice (or a copy of the privacy notice) at least once every three years in compliance with the HIPAA Privacy Rule.

D. Complaints. The Privacy and Security Official will be the Plan's contact person for receiving complaints in accordance with 45 C.F.R. 164.530(d)(1). If the Privacy and Security Official is unable to resolve the complaint, the complaining party may appeal to LACERA's Board of Retirement in accordance with the LACERA Administrative Appeals Procedure, bypassing Level 1 and going directly to a Level 2 appeal. A copy of the procedure shall be provided to any participant upon request.

E. Sanctions. Pursuant to 45 C.F.R. 164.530(e)(1), sanctions for using or disclosing PHI in violation of HIPAA or this HIPAA Privacy Policy will be imposed in accordance with the Plan's Policy on Sanctions for Violation of the HIPAA Privacy and Security Rules.

F. Mitigation of Inadvertent Disclosures of PHI. The Plan shall mitigate, to the extent possible, any potentially harmful effects that become known to it of a Use or Disclosure of an individual's PHI in violation of HIPAA or this Policy, as required by 45 C.F.R. 164.530(f). As a result, if an employee becomes aware of a Disclosure of PHI, either by an employee or a Business Associate the employee or the Business Associate, that is not in compliance with this policy or HIPAA, the employee should immediately contact the Privacy and Security Official so that the appropriate steps to mitigate any potential harm to the participant can be taken.

G. No Intimidating or Retaliatory Acts; No Waiver of HIPAA Privacy. A covered entity or Business Associate may not threaten, intimidate, coerce, harass, discriminate against, or take any other retaliatory action against any individual for exercising their rights under HIPAA, including, but not limited to, filing a complaint, participating in an investigation, or opposing any improper practice.

H. Waiver of Rights. A covered entity may not require Individuals to waive their rights to file a complaint with the Secretary of Health and Human Services as provided by 45 C.F.R 160.306 as a condition of the provision of treatment, payment, enrollment in a health plan, or eligibility for benefits. 45 C.F.R. 164.530(h).

I. Documentation. The Plan shall maintain this Policy and any other policies and procedures implemented to comply with this Policy in written (which may be electronic) form and if an action, activity or assessment is required by this Policy to be documented, maintain a written (which may be electronic) record of the action, activity, or assessment, in accordance with 45 C.F.R 164.530(i);(j).

1. **Time Limit.** The Plan shall retain the documentation for 6 years from the date of its creation or the date when it last was in effect, whichever is later, in accordance with 45 C.F.R 164.530(j)(i)(2).

2. **Availability.** The Plan shall make documentation available to those persons responsible for implementing the procedures to which the documentation pertains.

3. **Updates.** The Plan shall review documentation periodically, and update as needed, in response to environmental or operational changes affecting the privacy of the PHI, in accordance with 45 C.F.R 164.530(i)(2 – 5).

III. USE AND DISCLOSURE OF PHI

A. Workforce Must Comply with Plan's Policy and Procedures. All employees who have access to Plan PHI must comply with this Policy.

B. Permitted and Required Uses and Disclosures of PHI for Plan Administration Purposes. Unless otherwise permitted by law, the Plan (or a Business Associate or health insurance issuer on behalf of the Plan) may Disclose PHI to LACERA, and LACERA may receive such information, provided that LACERA shall Use or Disclose PHI only for Plan Administration Functions. Such PHI shall be handled in accordance with the Plan Document HIPAA Privacy and Security Rule Requirements for Disclosure of PHI to Los Angeles County Retiree Healthcare Program.

C. Permitted Uses and Disclosures: Payment and Health Care Operations. The Plan may Disclose PHI to the Plan Sponsor for the Plan's own payment and health care operations purposes, and PHI may be Disclosed to another covered entity for the payment purposes of that covered entity in accordance with 45 C.F.R. 164.506.

D. No Disclosure of PHI for Non-Health Plan Purposes. PHI may not be Used or Disclosed for the payment or operations of LACERA's "non-health" benefits (e.g., disability, workers' compensation, life insurance, etc.), unless the participant has provided an authorization for such Use or Disclosure (as discussed in "Disclosures Pursuant to an Authorization") or such Use or Disclosure is required by applicable state law and particular requirements under HIPAA are met.

E. Permitted Disclosures of PHI. The Plan may Use or Disclose PHI without the written authorization of the Individual in certain narrowly tailored situations as set forth in 45 C.F.R. 164.512. Prior to any unauthorized Disclosure, Plan employees must consult with the Privacy and Security Official and the Legal Division to ensure such Disclosure meets the requirements of that 45 C.F.R. 164.512.

F. Disclosures of PHI Pursuant to an Authorization. PHI may be Disclosed for any purpose if an authorization that satisfies all of the requirements for a valid authorization is provided by the participant in accordance with 45 C.F.R. 164.508. All Uses and Disclosures made pursuant to a signed authorization must be consistent with the terms and conditions of the authorization.

G. Minimum Necessary When Disclosing or Requesting PHI. When Using or Disclosing PHI or when requesting PHI from another covered entity or Business Associate, the Plan or its Business Associate must make reasonable efforts to limit Use or Disclosure of PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure, or request in accordance with 45 C.F.R. 164.502(b)(1). The Plan shall comply with the requirements of 45 C.F.R. 164.514(d)(1) in order to meet the minimum necessary standard.

H. Disclosures of PHI to Business Associates. Pursuant to 45 C.F.R. 164.502(e), the Plan may Disclose PHI to a Business Associate and may allow a Business Associate to create, receive, maintain, or transmit PHI on its behalf, if the covered entity obtains satisfactory assurance that the Business Associate will appropriately safeguard the information. Such assurance shall be through a written contract or other written agreement or arrangement with the Business Associate that meets the applicable requirements of 45 C.F.R. 164.504(e).

1. A Business Associate may Disclose PHI to a Business Associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI on its behalf, if the Business Associate obtains satisfactory assurances, in accordance with 45 C.F.R. 164.502(e)(1)(i), that

the subcontractor will appropriately safeguard the information. Business Associate will obtain written permission from the Plan prior to any such Disclosure.

I. Disclosures of De-Identified Information. The Plan may Use PHI to create information that is not Individually identifiable health information or Disclose PHI only to a Business Associate for such purpose, whether or not the de-identified information is to be used by the covered entity, pursuant to 45 C.F.R. 164.502(d) Such PHI must be de-identified in accordance with 45 C.F.R. 164.514 (a) and (b).

J. Physical Access Controls/Guidelines to Guard PHI. The Plan will maintain strict physical access controls to its information systems at all times and under all conditions. This includes the physical security of electronic and paper data. The Employer will terminate access to information systems and other sources of PHI, including access to rooms or buildings where PHI is located, when an employee, agent or contractor ends his/her employment or engagement. The Employer will terminate access to specific types of PHI when the status of any member of the workforce no longer requires access to those types of information.

IV. RIGHTS OF PLAN PARTICIPANTS

A. Access to PHI and Requests for Amendment. Right of access to PHI. Subject to certain limitations, Plan Participants have a right of access to inspect and obtain a copy of PHI about the Individual in a designated record set, for as long as the PHI is maintained in the designated record set. The Plan shall create procedures for handling and documenting such record requests in accordance with 45 C.F.R. 164.524.

1. **Right to Amend.** Plan Participants have a right to have a covered entity amend PHI or a record about the Individual in a designated record set for as long as the PHI is maintained in the designated record set. The Plan shall create procedures for handling and documenting such record requests in accordance with 45 C.F.R. 164.526.

B. Accounting. Plan Participants have a right to receive an accounting of Disclosures of PHI made by a covered entity in the six years prior to the date on which the accounting is requested. The Plan shall create procedures for handling and documenting such record requests in accordance with 45 C.F.R. 164.528. The following Disclosures are not subject to accounting:

1. To carry out payment and health care operations as provided in 45 C.F.R. 164.506;

2. To Individuals of PHI about them as provided in 45 C.F.R. 164.502;

3. Incident to a Use or Disclosure otherwise permitted or required by this subpart, as provided in 45 C.F.R. 164.502;
4. Pursuant to an authorization as provided in 45 C.F.R. 164.508;
5. For the facility's directory or to persons involved in the Individual's care or other notification purposes as provided in 45 C.F.R. 164.510;
6. For national security or intelligence purposes as provided in 45 C.F.R. 164.512(k)(2);
7. To correctional institutions or law enforcement officials as provided in 45 C.F.R. 164.512(k)(5);
8. As part of a limited data set in accordance with 45 C.F.R. 164.514(e);
9. That occurred prior to the compliance date for the covered entity.

C. Deceased Individuals. The Plan must comply with the requirements of this subpart with respect to the PHI of a deceased Individual for a period of 50 years following the death of the Individual, in accordance with 45 C.F.R. 164.502(f).

D. Personal Representatives. The Plan shall treat a personal representative as the Individual for purposes of this subchapter, in accordance with 45 C.F.R. 164.502(g). Any person acting as an Attorney-in-Fact under authority of a legally valid Power of Attorney shall be a personal representative under this Section. Additionally:

1. Competent adults and emancipated minors are their own personal representatives.
2. For unemancipated minors, a parent, guardian, or other person with court-ordered or statutory legal authority, has authority to act as personal representative on behalf of the child.
3. For incapacitated or incompetent adults, a guardian or conservator, has authority to act as the personal representative.
4. For deceased individuals, an executor, administrator, or other person has legal authority to act as personal representative on behalf of a deceased individual or of the individual's estate.
5. Notwithstanding a State law or any requirement of this paragraph to the contrary, the Plan may elect not to treat a person as the personal representative of an individual if the Plan has a reasonable belief that the individual has been or may be subjected to domestic violence, abuse, or

neglect by such person, or treating such person as the personal representative could endanger the individual. The Plan, in the exercise of professional judgment, may elect not to treat a person as the personal representative if it decides that it is not in the best interest of the individual to treat the person as the individual's personal representative.

E. Right of an Individual to Request Restriction of Uses and Disclosures.

Plan Participants have a right to request that the Plan restrict Uses or Disclosures of PHI about the Individual to carry out payment, or health care operations, in accordance with 45 C.F.R. 164.522(a)(1).

F. Confidential Communications Requirements. The Plan must permit Individuals to request and must accommodate reasonable requests by Individuals to receive communications of PHI from the health plan by alternative means or at alternative locations, if the Individual clearly states that the Disclosure of all or part of that information could endanger the Individual, in accordance with 45 C.F.R. 164.522(b)(1)(ii).