

**EMPLOYEE GROUP INSURANCE
TREATMENT OF PROTECTED HEALTH INFORMATION**

Section 4.4: Discretionary Uses and Disclosures Without An Authorization	Page: 1 of 5
Effective Date: April 14, 2003	

POLICY

HIPAA requires Covered Entities to have policies and procedures addressing Uses and Disclosures that are permitted by other laws which are not pre-empted by HIPAA. EGI shall conduct Uses and Disclosures of PHI that are permitted by law in the absence of an authorization *for routine uses* without specific approval from the Contact Person in consultation with the Privacy Officer, but shall obtain such approval prior to any *non-routine* Use or Disclosure of PHI under this Section. This section does not apply to Uses and Disclosures that are required by law, including Uses or Releases required by Court Order as described in Section 4.3 of this Policy. With the exception of Subsections 4.4(1)(a) and 4.4(2)(a)(i), all Uses and Disclosures described in this section are considered to be permitted, as opposed to required, by law.

4.4(1) Routine Uses and Disclosures Exempt from Prior Approval.

EGI may Use or Disclose PHI without an authorization and without seeking prior approval by the Privacy Officer under any of the following circumstances, each of which shall be considered a “routine” Use or Disclosure, subject to the Verification requirements of Section 4.10 and, with the exception of Paragraph a of this subsection, the Minimum Necessary requirements of Section 4.9 of this Policy.

- a. Disclosure of an Individual’s Own PHI to that Individual
- b. Uses or Disclosures for the Purpose of Conducting Payment Operations: EGI may Use or Disclose PHI in order to conduct its Payment operations.
- c. Uses or Disclosure for the Purpose of Conducting Health Care Operations: EGI may Use or Disclose PHI in order to conduct Health Care Operations, provided that EGI’s ability to Use or Disclose PHI in connection with underwriting activities is subject to Section 4.5 of this Policy. Health Care Operations include Disease Management as defined by the HIPAA Privacy Rules. Health Care Operations do not including Marketing.
- d. Uses and Disclosures for Health Oversight Activities: EGI may Disclose PHI to a Health Oversight Agency for oversight activities authorized by law (including audits; civil, administrative, or criminal investigations; inspections; licensure or disciplinary actions; civil, administrative, or criminal proceedings or actions; or other activities necessary for appropriate oversight of the health care system, government benefit programs for which health information is relevant to beneficiary eligibility, entities subject to government regulatory programs for which health information is necessary for determining compliance with program standards, and entities subject to civil rights

laws for which health information is necessary for determining compliance), provided that such health oversight activity arises out of, or is directly related to, (i) the receipt of health care; (ii) a claim for public benefits related to health; (iii) qualification for, or receipt of, public benefits or services when a patient's health is integral to the claim for public benefits or services; or (iv) a claim for public benefits not related to health, if such activity is conducted in conjunction with an activity described by one of the preceding Clauses (i), (ii), or (iii).

- e. Disclosures for Inspection by the Secretary: Upon the request of the Secretary for access to PHI, and provided that Section 8.1 of this Manual permits the Secretary to obtain such access, EGI may Disclose PHI to the Secretary.
- f. Disclosures for Workers' Compensation: EGI may Disclose PHI as authorized by, and to the extent necessary to, comply with laws relating to workers compensation or other similar programs, established by law, that provide benefits for work-related injuries or illness without regard to fault.
- g. Disclosure of Limited Data Sets: EGI may Disclose a Limited Data Set for the purpose of Health Care Operations, research activities, and public health activities if the recipient has entered into a data use agreement that complies with Section 6.3 of this Manual.

Notwithstanding the above, a Use or Disclosure of PHI that constitutes an individual's entire medical record or psychotherapy notes shall not be considered to be made under "routine" circumstances.

4.4(2) Non-Routine Uses and Disclosures of PHI Requiring Prior Approval.

Prior to making any Use or Disclosure of PHI identified below, or that is not identified in Section 4.1(1) of this Policy as a "routine" Use or Disclosure, EGI shall notify the Contact Person of such intended Use or Disclosure and shall refrain from making such Use or Disclosure absent the approval of the Contact Person provided in consultation with the Privacy Officer. In considering whether to approve a non-routine Use or Disclosure, the Verification requirements of Section 4.10 and the Minimum Necessary requirements of Section 4.9 of this Policy must be met.

- a. Disclosures for Third Party Judicial or Administrative Proceedings:
 - i. Court Orders: EGI shall disclose PHI in response to an order of a court or administrative tribunal of competent jurisdiction provided that EGI discloses only the PHI expressly authorized by such order. When a request is made pursuant to an order from a court or administrative tribunal, EGI may disclose the information requested without any additional process. A subpoena issued by a court constitutes a disclosure that is required by law and nothing in this Section or otherwise shall interfere with the ability of EGI to comply with such subpoena.

- ii. Written Notice: In response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, if EGI receives from the party seeking the PHI a written statement and accompanying documentation demonstrating that (A) the party seeking the PHI has made a good faith attempt to provide written notice to the individual who is the subject of the PHI or, if the subject's location is unknown, to mail a notice to the subject's last known address, (B) the notice included sufficient information about the litigation or proceeding in which the PHI is requested to permit the subject to raise an objection to the court or administrative tribunal, and (C) the time for the subject to raise objections to the court or administrative tribunal has elapsed and either (I) no objections were filed or (II) all objections filed by the subject have been resolved by the court or administrative tribunal and the Disclosures being sought are consistent with such resolution;
- iii. Qualified Protective Order: In response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, if EGI receives a written statement and accompanying documentation demonstrating that (A) the parties to the dispute giving rise to the request for information have agreed to a qualified protective order (a "qualified protective order" is an order of the court or administrative tribunal or a stipulation by the parties to the litigation or administrative proceeding that (I) prohibits the parties from Using or Disclosing the PHI for any purpose other than the litigation or proceeding for which such information was requested and (II) requires the PHI, including all copies made, to be returned to EGI or destroyed at the end of the litigation or proceeding) and have presented the order to the court or administrative tribunal with jurisdiction over the dispute or (B) the party seeking the PHI has requested a qualified protective order from such court or administrative tribunal.
- iv. EGI's Efforts: In response to a subpoena, discovery request, or other lawful process that is not accompanied by an order of a court or administrative tribunal, if EGI makes reasonable efforts to provide written notice to the subject, as described above, or to seek a qualified protective order, as defined above in iii.
- v. All actions taken by EGI pursuant to this paragraph shall only be taken upon consultation with legal counsel.
- b. Uses and Disclosures for Public Health Activities: Subject to the minimum necessary rule described in Section 4.9 of this Policy, EGI may Disclose PHI for:
 - i. Disease Prevention: A Public Health Authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability (including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions) or, at the direction of a Public Health Authority, an official of a foreign government agency that is acting in collaboration with the Public Health Authority;

- ii. Reporting Child Abuse or Neglect: A Public Health Authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;
 - iii. FDA Regulation: A person subject to the jurisdiction of the Food and Drug Administration (“FDA”) with respect to an FDA-regulated product or activity for which that person has responsibility, for the purpose of activities related to the quality, safety, or effectiveness of such FDA-regulated product or activity, including (A) collecting or reporting adverse events (or similar activities with respect to food or dietary supplements), product defects or problems (including problems with the use or labeling of a product), or biological product deviations, (B) tracking FDA-regulated products, (C) enabling product recalls, repairs, replacement, or lookback (including locating and notifying individuals who have received products that have been recalled, withdrawn, or are the subject of lookback), and (D) conducting post marketing surveillance; or
 - iv. Disease Control: A person who may have been exposed to a communicable disease or may otherwise be at risk of contracting or spreading a disease or condition if EGI or a Public Health Authority is authorized by law to notify such person as necessary in the conduct of a public health intervention or investigation.
- c. Disclosures for Law Enforcement Purposes: EGI may Disclose an individual’s PHI to a law enforcement official under any of the following circumstances:
- i. Court Order: In compliance with and as limited by the relevant requirements of a court order, a court-ordered warrant, a subpoena or summons issued by a judicial officer, a grand jury subpoena, or—if (A) the PHI sought is relevant and material to a legitimate law enforcement inquiry, (B) the request is specific and limited in scope to the extent reasonably practicable in light of the purpose for which the PHI is sought, and (C) De-identified Information could not reasonably be used—an administrative request (including an administrative subpoena or summons, a civil or an authorized investigative demand, or similar process authorized under law);
 - ii. Using PHI for Identification or Location: In response to a law enforcement official’s request for such PHI for the purpose of identifying or locating a suspect, fugitive, material witness, or missing person;
 - iii. Alerting of Death: For the purpose of alerting law enforcement of the individual’s death, if EGI suspects that such death resulted from criminal conduct; or
 - iv. Alerting of Criminal Conduct: Due to EGI’s good faith belief that such PHI constitutes evidence of criminal conduct that occurred in connection with benefits obtained through EGI.
- d. Uses and Disclosures Due to Imminent Threat to Health or Safety: EGI may, consistent with applicable law and standards of ethical conduct, Use or Disclose PHI if EGI, in good faith, including reliance on actual knowledge or on a credible

- representation by a person with apparent knowledge or authority, believes the Use or Disclosure is necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public and involves PHI, including Psychotherapy Notes, Disclosed to a person or persons reasonably able to prevent or lessen the threat, including the target of the threat.
- e. Uses and Disclosures Required by Military Authority: EGI may Use or Disclose the PHI of individuals who are Armed Forces personnel, or foreign military personnel, for activities deemed necessary by appropriate military command authorities to assure the proper execution of a military mission, if the appropriate military authority has published by notice in the Federal Register (i) the appropriate military command authorities and (ii) the purposes for which the PHI may be Used or Disclosed.
 - f. Uses and Disclosures for National Security Activities: EGI may Disclose PHI to authorized federal officials for the conduct of lawful intelligence, counter-intelligence, and other national security activities authorized by the National Security Act (50 U.S.C. § 401 *et seq.*) and implementing authority (e.g., Executive Order 12333).
 - g. Disclosures to Coroners and Medical Examiners: EGI may Disclose PHI, including Psychotherapy Notes, to a coroner or medical examiner for the purpose of identifying a deceased person, determining a cause of death, or other duties as authorized by law. In connection with such Disclosure, EGI shall not be required to redact identifying information about persons other than the deceased individual.
 - h. Disclosures to Funeral Directors: EGI may Disclose an individual's PHI to funeral directors, consistent with applicable law, as necessary to carry out their duties with respect to the individual after his death, or prior to and in reasonable anticipation of the individual's death.

REFERENCES/CITATIONS

45 C.F.R. §§ 164.512, 164.514(d)

Fed. Reg. at 82,544-45 (Dec. 28, 2000)