

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

<b>Section 6.1: Contracts With Business Associates</b>	<b>Page: 1 of 3</b>
<b>Effective Date:</b> April 14, 2003	

**POLICY**

EGI shall require any Business Associate of EGI to agree by written agreement to certain restrictions and duties with respect to PHI that the Business Associate creates, collects or holds on behalf of EGI in its capacity as a Covered Entity.

**6.1(1) Identifying Business Associates**

EGI shall review existing Self-funded Group Health Plan-related contracts that involve Use or Disclosure of PHI in order to determine whether such contracts need to be amended to include Business Associate agreement provisions. Prior to entering into any new agreement with another entity concerning such services or activities, EGI shall determine whether the entity is a Business Associate as a result of such services or activities.

Business Associates may include persons who have periodic contact with PHI (e.g., outside auditors), or substantial contact with PHI (e.g., vendors providing claims processing).

**6.1(2) Contracting with Business Associates**

If a Business Associate creates, receives, Uses, or Discloses EGI PHI, EGI shall require the Business Associate to enter into a written contract or other written agreement with EGI that:

- a. Establishes the Business Associate's permitted and required Uses and Disclosures of EGI PHI, which Uses and Disclosures would not violate the HIPAA Privacy Standards if performed by EGI, except that the agreement may permit the Business Associate to (i) Use EGI PHI as necessary to carry out the Business Associate's proper management and administration or legal responsibilities; (ii) Disclose EGI PHI for such purposes if the Disclosure is required by law or if the Business Associate obtains reasonable assurances from the person to whom EGI PHI is Disclosed that it will be held confidentially and Used or further Disclosed only as required by law or for the purpose for which it was Disclosed to the person and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of EGI PHI has been breached; and; (iii) conduct data analyses relating to the Health Care Operations of both EGI and another entity of which the Business Associate is a Business Associate.
- b. Provides that the Business Associate shall use appropriate safeguards to prevent Use or Disclosure of EGI PHI other than as provided for by the agreement;
- c. Provides that the Business Associate shall report to EGI any Use or Disclosure of EGI PHI not provided for by the agreement of which it becomes aware;

- d. Provides that the Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EGI PHI agrees to the same restrictions and conditions that apply to the Business Associate with respect to such PHI;
- e. Provides that the Business Associate shall make EGI PHI available to individuals in the same manner as the Plan in accordance with Section 7.2 of this Manual;
- f. Provides that the Business Associate shall make EGI PHI available to individuals for amendment in the same manner as EGI in accordance with Section 7.3 of this Manual and, if informed of an amendment to EGI PHI by EGI or other Covered Entity, shall incorporate such amendment into the Business Associate's Designated Record Set;
- g. Provides that the Business Associate shall make EGI PHI available as required to provide an accounting of disclosures to individuals in the same manner as EGI in accordance with Section 7.4 of this Manual;
- h. Provides that the Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of EGI PHI available to the Secretary for purposes of determining EGI's compliance with the HIPAA Privacy Standards;
- i. Provides that the Business Associate shall, at termination of the contract, if feasible, return or destroy all EGI PHI that the Business Associate still maintains in any form and retain no copies of such PHI or, if such return or destruction is not feasible, extend the protections of the agreement to the PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of EGI PHI infeasible; and
- j. Authorizes termination of the agreement by EGI in the event that the EGI determines that the Business Associate has violated a material term of the agreement, except that this provision may be omitted from the agreement if it is inconsistent with the statutory obligations of EGI or the Business Associate or if the Business Associate is another office within System Administration, a component institution of The System or another state agency .

Notwithstanding the foregoing, if an entity is required by law to perform an activity or provide a service, and the entity qualifies as a Business Associate solely because of such legally required activities or services, EGI may either (i) require the entity to enter into a written agreement as described above, (ii) obtain satisfactory assurances from the entity that it will comply with the agreement's provisions described above, or (iii) if EGI's good faith attempt to obtain such satisfactory assurances fails, document the attempt and the reasons that such assurances could not be obtained.

### **6.1(3) Monitoring Business Associates**

If EGI learns that a Business Associate has materially violated one or more of the written agreement's provisions described in subsection 6.1(2) of this Section, EGI shall take reasonable steps to end the violation and mitigate the violation's harmful effects in accordance with Section 8.4 of this Manual. If EGI's steps to end the violation and mitigate its effects are unsuccessful, EGI shall terminate the contract or arrangement with the Business Associate or,

if the Privacy Officer determines that such termination is not feasible, report the problem to the Secretary.

**6.1(4) Documentation of Business Associates.**

EGI shall retain any written agreement with a Business Associate, or any other set of written provisions intended to comply with this Section. Such documentation shall be retained in accordance with Section 9.2 of this Manual.

**REFERENCES/CITATIONS**

45 C.F.R. §§ 164.502(e), 164.504(e)

65 Fed. Reg. at 82,503-07, 82,640-45 (Dec. 28, 2000); 67 Fed. Reg. at 53,248-54 (Aug. 14, 2002)