

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

<b>Section 8.5: Sanctions for Personnel Violations of Privacy</b>	<b>Page: 1 of 2</b>
<b>Effective Date:</b> April 14, 2003	

**POLICY**

EGI adopts the System Administrations policies and procedures as the sanctions required by HIPAA for failure to comply with the HIPAA Privacy Standards or the policies and procedures set forth in this Manual. Sanctions shall not be imposed upon persons who Disclose PHI in furtherance of compliance with the HIPAA Privacy Standards.

**8.5(1) Parties Responsible for Imposing Discipline.**

Sanctions shall be imposed upon employees who violate these policies in accordance with the applicable System Administration employee disciplinary policies and procedures. The supervisor imposing the sanction must have or act in consultation with others who have sufficient knowledge of the HIPAA Privacy Standards to assess the extent and impact of any violations that have occurred.

**8.5(2) Individuals Who May Be Subject to Discipline**

Employees in the course of their duties for a Health Care Component may be subject to sanctions under this Section. Independent contractors are not considered members of the Health Care Components' staff and are therefore not subject to discipline under this Section.

**8.5(3) Violations That Will Prompt Consideration of Disciplinary Action**

Persons may be subject to discipline, up to and including discharge, for violations of either (i) the HIPAA Privacy Standards or (ii) the policies and procedures set forth in this Manual. Managers or supervisors may also be subject to discipline, up to and including discharge, if their lack of diligence or lack of supervision contributes to a subordinate's privacy violation. A person shall not be subject to discipline as a result of performing one or more of the following:

- a. Filing a complaint with the Secretary for suspected violation of the HIPAA Privacy Standards;
- b. Testifying, assisting, or participating in an investigation, compliance review, proceeding, or hearing in connection with the "Administrative Simplification" provisions of HIPAA;
- c. Opposing any act or practice made unlawful by the HIPAA Privacy Standards, provided that (i) the person has a good faith belief that the practice opposed is unlawful; and (ii) the manner of the opposition is reasonable and does not involve a Disclosure of PHI in violation of the HIPAA Privacy Standards;

- d. Disclosing PHI if (i) the individual believes in good faith either that EGI has engaged in conduct that is unlawful or otherwise violates professional or clinical standards or that the care, services, or conditions provided by EGI potentially endanger one or more Member, workers, or the public; and (ii) the Disclosure is either to a Health Oversight Agency or Public Health Authority authorized by law to investigate or otherwise oversee the relevant conduct or conditions of EGI, to an attorney retained by or on behalf of the individual for the purpose of determining the person's legal options with regard to the relevant conduct of persons, or to an appropriate health care accreditation organization for the purpose of reporting the allegation of failure to meet professional standards or misconduct by EGI; or
- e. Disclosing PHI to a law enforcement official in compliance with this Manual

#### **8.5(4) Existence of Appeal Process**

In the event that a sanction triggers any process of appeal under the applicable System Administration employee disciplinary policies and procedures such process shall be made available to the employee. However, in the event that the party hearing the appeal is not a party identified in this Manual as having access to PHI, the identity of the individual whose privacy rights were violated shall be removed to the extent feasible.

#### **8.5(5) Documentation of Disciplinary Actions**

- a. EGI shall document the disciplinary action, including (i) the privacy violation; (ii) the parties who determined the disciplinary action; (iii) the facts and circumstances considered in determining the disciplinary action (without regard to whether such considerations were relied upon in determining the disciplinary action); (iv) the discipline imposed (including lack of discipline); (v) the appeals process used, if any, and the results thereof; and (vi) the actions taken in order to enforce the discipline.
- b. Such documentation shall be retained in accordance with Section 9.2 of this Manual in addition to the documentation required by the applicable System Administration policies and procedures. Any documentation that identifies the individual whose privacy rights were violated may constitute PHI. To the extent practicable, such identifying information shall be removed prior to a Use or Disclosure of the documentation. In addition, where feasible, the violator's identity shall be removed prior to any Disclosure of such documentation.

#### **REFERENCES/CITATIONS**

45 C.F.R. §§ 164.502(j), 164.512(f)(2)(i), 164.530(e), (g)

65 Fed. Reg. at 82,501-02, 82,562, 82,636-37, 82,747 (Dec. 28, 2000)