

PRIVACY RULE COMPLIANCE

The federal Privacy Rule of the Health Insurance Portability and Accountability Act (HIPAA) requires the district to adopt a policy protecting the privacy rights of its employees.

DEFINITIONS

For the purposes of this policy, the following definitions apply:

1. “Privacy Officer” shall mean the superintendent or the superintendent’s designee.
2. “HHS Privacy Regulations” or “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information as defined at 45 C.F.R. Parts 160 and 164, Subparts A and E.
3. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” as defined in 45 U.S.C. Section 164.501, but is limited to any such information created or received by Business Associate from or on behalf of Covered Entity.
4. “Business Associate” shall mean a person or organization not a part of the district’s work force that performs certain functions or activities, such as, but not limited to, claims processing, data analysis, and billing, on behalf of the district that involves the use or disclosure of individually identifiable health information.
5. “Covered Entity” shall mean a district that acts as a “health plan,” including an employer-sponsored group health plan. Exceptions to this definition are those health plans with less than fifty (50) participants that are administered solely by the employer.

PRIVACY NOTICE

A notice of privacy practices regarding Protected Health Information (PHI) and the use or disclosure that may be made of PHI shall be provided annually to employees who are covered by the district’s health plan.

ACCESS TO PROTECTED HEALTH INFORMATION

Employees, or their personal representatives, have the right to inspect or copy their PHI. This right to access includes access to the information held by a Business Associate of the district. Requests to access PHI shall be in writing and the Privacy Officer shall respond within *thirty (30) days* of the request. If the PHI is not readily available on site, the Privacy Officer shall have an *additional sixty (60) days* to respond. If the Privacy Officer is not able to respond within

these time limits, a written notification will be provided to the individual making the request. Responses shall be consistent with the requirements of the Privacy Rule.

RIGHT TO REQUEST AMENDMENT OF PHI

An individual has the right to request the amendment of his or her PHI. All such requests are required to be in writing and must provide a reason for the requested amendment. The Privacy Officer shall act and respond within sixty (60) days of receipt of the request. If the request is denied, the following information will be provided:

1. The basis for denial.
2. How the person may submit a written statement disagreeing with the denial.
3. A statement that, if the individual does not submit a statement of disagreement, the individual may request that the district include the request for amendment and the denial in any future disclosures of the PHI at issue.
4. A description of how the individual may complain to the district, including contact information.

All requests and related documentation shall be maintained for six (6) years.

RIGHT TO ACCOUNTING

An individual has the right to an accounting of disclosures of PHI made by the district, except disclosures made for payment, treatment, health care operations, disclosures to the subject individual, incidental disclosures, or disclosures made pursuant to a valid authorization. Such request must be in writing.

Accounting of disclosures shall include:

1. The date of disclosure, name of the entity or person who received the PHI and a brief statement of the purpose, or a copy of the individual's authorization or written request for disclosure.
2. For multiple disclosures of PHI to the same person or entity, the following may be provided in the accounting: the time of the first disclosure, a full accounting with all elements described above, the frequency period, periodicity or number of disclosures made during the accounting period, and the date of the last disclosure in the accounting period.
3. *The first accounting within a 12-month period will be at no cost to the individual. A reasonable cost-based fee will be charged for all subsequent accountings of disclosures during the 12-month period.*

RIGHT TO RESTRICT USE OR DISCLOSURE

An individual has the right to request in writing that the district restrict the use or disclosure of PHI for purposes of treatment, payment, or health care operations. The district shall honor any restriction, except in the case of an emergency. Any agreement to restrict disclosure shall be retained for a period of six (6) years from the date of its creation. Any termination of such restriction shall be documented.

Individuals have the right to restrict the manner and method of communication regarding PHI. Reasonable requests as determined by the Privacy Officer will be accommodated. Such requests or agreements for confidential communication shall be reduced to writing.

DISCLOSURES WITHOUT CONSENT/AUTHORIZATION

In compliance with the Privacy Rule, the district shall disclose PHI upon request to the individual who is the subject of the PHI and to the Secretary of the U.S. Department of Health and Human Services.

At the discretion of the Privacy Officer, the district may disclose PHI for treatment, payment, and health care operations without a signed authorization from the subject individual and as otherwise may be permitted under the Privacy Rule.

Disclosures for worker's compensation purposes are excluded from coverage by HIPAA and are covered by state law.

DISCLOSURE OF PHI WITH AUTHORIZATION

A signed authorization is required for disclosure of PHI unless an exception applies. The authorization must comply with the requirements of the Privacy Rule and the disclosure shall be consistent with the terms of the authorization. The signed authorization form must be retained for six (6) years and the individual who signed the authorization must be given a copy.

AUTHORIZATION CONTENT

The authorization form shall contain, at a minimum, the following:

1. The specific and meaningful description of the information.
2. The name or other specific identification of the person(s) or class of persons (such as a personal representative) authorized to make the requested use or disclosure.
3. The name or specific identification of the person(s) or class of persons to whom the district may make the requested use or disclosure.

4. An expiration date or event that relates to the individual or the use or disclosure purpose, but in no case shall the expiration date be more than one (1) year after the date of the signature.
5. A statement of the individual’s right to revoke the authorization in writing and the procedure to do so.
6. A statement that any PHI used or disclosed based on the authorization may be subject to redisclosure by the recipient and may no longer be protected by the Privacy Rule.
7. A statement of the inability to condition treatment, payment, enrollment, or eligibility for benefits on the authorization.
8. The individual’s dated signature.
9. If an individual’s personal representative signs the authorization, a description of that representative’s authority to act on the individual’s behalf.

HEALTH INFORMATION FOR EMPLOYMENT PURPOSES

Health information regarding employees provided to the district as the employer for a specific employment purpose is not PHI and will be kept in the employee’s personnel record. PHI will not be made part of an employee’s personnel record without the signed authorization of the employee or personal representative, as required by the Privacy Rule.

PRIVACY OFFICER

The *superintendent or designee* is appointed as the Privacy Officer/Contact Person for the district. All complaints should be forwarded to (*address*) and addressed to the attention of the Privacy Officer.



LEGAL REFERENCE:

PL 104-191
 42 USC § 1320d-2(d)
 45 CFR §§ 160-164

ADOPTED: August 10, 2005

AMENDED:

**Language in text set forth in italics is optional.*

[DISTRICT LETTERHEAD]

Date

Dear Employee:

The _____ School District No. ____ *reimburses certain medical costs of employees consisting of _____ (describe what costs the school district reimburses under its plan) or provides an employer-sponsored group health plan to its employees.* Under the Health Insurance Portability and Accountability Act (HIPAA), the district must maintain the confidentiality of protected health information regarding employees received in the course of providing a healthcare plan. Enclosed for your review is a notice (similar to a notice received from a healthcare provider), which provides an overview of the district's practices and procedures and sets forth your rights to access the protected health information about you and your family members maintained by the district.

Please review this information. If you have any questions, please feel free to contact me at _____ *(telephone number)*.

Sincerely,

Name

HIPAA Privacy Officer

NOTICE OF PRIVACY PRACTICES

THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED OR DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW IT CAREFULLY.

I. Privacy Obligations:

The _____ School District (hereinafter "School District") is considered to be a Health Plan under the Health Insurance Portability and Accountability Act and receives Protected Health Information regarding employees in the course of making reimbursement to those employees for deductibles paid in conjunction with insurance coverage for employees and their family members. Accordingly, we are required to maintain the privacy of certain financial, personal, and health information (Protected Health Information, PHI) and to provide you with this notice of our legal duties and privacy practices with respect to PHI. When we use or disclose PHI, we are required to abide by the terms of this notice or any subsequent notice in effect at the time of the use or disclosure.

The School District utilizes a private business entity, _____ (hereinafter "Business Associate"), to implement the reimbursement payments for employees. Statement of Benefits documents may be disclosed to our Business Associate for this purpose. This disclosure will be made without the signed authorization of the employee. Other disclosures may be made for purposes of treatment, payment, or health care operations without the authorization of the employee. The School District shall comply with the requirements of the federal Privacy Rule.

II. Uses and Disclosures of PHI based upon on your written authorization:

Other uses and disclosures of your PHI will be made only with your written authorization, unless otherwise permitted or required by law, as described below. This authorization will describe how the information will be used, and a copy of this Privacy Notice will accompany each request for authorization that is made by a third party or by the School District and sent to you. You may revoke your written authorization at any time, in writing, except to the extent that your physician or the physician's practice had taken an action in reliance on the use or disclosure indicated in the authorization.

Uses and Disclosure for Research: No PHI will be released for clinical research unless you agreed to participate in a specific research program and have provided written consent at the time of your enrollment in that research program.

III. Permitted and Required Uses and Disclosure that may be made without your consent or authorization or opportunity to object:

There are occasional circumstances in which we may use or disclose your PHI without obtaining your authorization to do so. Generally speaking, you have the right to agree to and authorize the disclosure of your PHI, then we may, in these limited circumstances using professional judgment, determine whether the disclosure is in your best interest. In this case, only the PHI that is relevant to your health care will be disclosed.

A. Emergency Circumstances. Unless you object, we may use or disclose some or all of the PHI in an emergency situation because of an individual's incapacity or an emergency treatment circumstance.

B. Compliance with Legal Authority. We may use or disclose your PHI when we are required to do so, as in the case of reporting abuse or neglect to appropriate federal or state law enforcement agencies.

- C. **Others Involved in Your Health Care.** Unless you object, we may disclose to a member of your family, a relative, a close friend, or any other person you identify, your PHI that directly relates to that person's involvement in your health care, or to notify or assist in notifying a family member, personal representative, or any other person that is responsible for your care, of your location, general condition, or death. Finally, we may use or disclose your PHI to an authorized public or private entity to assist in disaster relief efforts and to coordinate uses or disclosure to family or other individuals involved in your health care.

IV. Your Individual Rights:

- A. **Right to Request Additional Restrictions.** You may request a restriction on our use or disclosure of PHI for treatment, payment, and operations. We will consider additional restrictions carefully, but we may not and are not required to agree to a requested restriction. If agreed, we will abide by the restriction.
- B. **Right to Receive Confidential Communications.** We will accommodate any reasonable written request for you to receive PHI by alternative means of communication or at alternate locations.
- C. **Right to Inspect and Copy Your Records.** You may request, in writing, access to your PHI in order to inspect or request copies of the records. You may be charged a fee for each copy. Under limited circumstances, as permitted by law, we may deny you access to a portion of your records, for example when a licensed health care professional feels that such disclosure may cause harm.
- D. **Right to Request an Amendment of Your Records.** You have the right to request that your PHI maintained by the School District be amended in cases where information is erroneous or incomplete and the information originated with the School District or its Business Associate.
- E. **Right to Receive Accounting of Disclosures.** You have the right to receive an accounting of disclosures of your information and to whom those disclosures have been made.
- F. **Right to Receive a Paper Copy of this Notice.** Upon request, you may obtain a copy of this notice, even if you agreed to receive such notice electronically.

V. Effective Date and Duration of this Notice.

This notice of Privacy Policy for the School District will become effective on or after _____, 2004. We may change the terms of this notice from time to time as may be deemed necessary. If we change this notice, a copy will be posted in the business office of the School District. You will receive a copy of the current notice any time the School District's obligations under your health insurance coverage changes.

If you desire further information regarding your privacy rights or are concerned that your rights have been violated, you may contact our Privacy Officer at _____, Idaho _____, or you may contact the Office of Civil Rights, U.S. Department of Health and Human Services, 2201 Sixth Avenue, Mail Stop RX-11, Seattle, Washington 98121, (206) 615-2290 (telephone); (206) 615-2296 (TDD); (206) 615-2297 (facsimile).

HIPAA Authorization Form

At my request, I authorize the _____ School District No. _____ (hereinafter "School District") to disclose personal health information as described below.

Name: _____ Date of Birth: _____

Street Address: _____

City/State/Zip: _____

Telephone Number: _____

Person or Organization Receiving the Information:

Name: _____

Street Address: _____

City/State/Zip: _____

Telephone Number: _____

Description of Specific Information to be Disclosed: _____

The date or event when this Authorization expires: _____

(If a date or event is not specified, this authorization will expire one year from the date of signature.)

I understand that if the person or organization that receives the information is not a health care provider or health plan covered by federal privacy regulations, the person or organization may not be obligated by state or federal law to protect it.

I understand that I may cancel this authorization in writing at any time by sending a written request to the School District offices. My cancellation of this authorization will not affect any action the School District took prior to receiving my cancellation request.

This authorization is voluntary. The School District will not condition my enrollment in the health plan or eligibility for payment of benefits on receiving this authorization.

Date: _____

Signature: _____

(If signed by a personal representative of the employee, please complete the following.)

Personal Representative's name: _____

Relationship to member: _____

(Such as parent, legal guardian, holder of power of attorney - please attach legal documentation if you are the legal guardian, holder of power of attorney, etc.)

BUSINESS ASSOCIATE AGREEMENT

THIS AGREEMENT is entered into on this ____ day of _____, 2004, by and between _____ SCHOOL DISTRICT NO. _____ doing business at _____, _____, Idaho 8_____, validly organized as a body corporate and politic hereby authorized to enter into contracts pursuant to Idaho Code Title 33, Chapter 6, and is a Covered Entity under the provisions of the Health Insurance Portability and Accountability Act (hereinafter "Covered Entity"), and _____, a Business Associate under the provisions of the Health Insurance Portability and Accountability Act and doing business at _____, _____, Idaho 8_____, (hereinafter "Business Associate").

WHEREAS, Covered Entity will make available and/or disclose to Business Associate certain employee Protected Health Information (PHI), along with goods or services that are being provided by the Business Associate to the Covered Entity; and

WHEREAS, Business Associate will have access to and/or receive from Covered Entity certain PHI that can be used or shared only in agreement with this Agreement and the U.S. Department of Health and Human Services (HHS) Privacy Regulations.

NOW, THEREFORE, the Covered Entity and the Business Associate agree to the following for the mutual benefit of each:

1. DEFINITIONS. The following words are defined below:

1.01 Agreement shall refer to this document.

1.02 Business Associate shall mean _____, the organization receiving the Information.

1.03 Covered Entity shall mean _____ School District No. _____, the organization providing or making available the Information.

1.04 Designated Record Set shall mean the PHI information regarding enrollment, payment, claims adjudication, case/medical records systems, and any other records used in whole or in part to make decisions about an individual.

1.05 HHS Privacy Regulations or Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information as defined at 45 C.F.R. Parts 160 and 164, Subparts A and E.

1.06 Individual shall mean the person who is the subject of the Protected Health Information, and has the same meaning as the term "individual" as defined in 45 C.F.R. Section 164.501, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g).

1.07 Parties shall mean Business Associate and Covered Entity.

- 1.08 Protected Health Information** or **PHI** shall have the same meaning as the term “protected health information” as defined in 45 U.S.C. Section 164.501, but is limited to any such information created or received by Business Associate from or on behalf of Covered Entity.
- 1.09 Required by Law** shall have the same meaning as the term “required by law” found at 45 C.F.R. Section 164.501.
- 1.10 Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services and/or his designee.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

- 2.01** Business Associate agrees to not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- 2.02** Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided by this Agreement.
- 2.03** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- 2.04** Business Associate agrees to report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.
- 2.05** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- 2.06** Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner agreed between the parties.
- 2.07** Business Associate agrees to make internal practices, books, and records, including policies and procedures related to PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity or to the Secretary, in a time and manner agreed between the parties, or designated by the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.
- 2.08** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

2.09 Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner agreed by the parties, information collected in accordance with Section 2.08 of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. Section 164.528.

2.10 Business Associate shall provide an accounting of all claims to Covered Entity by _____, 2004, and each month thereafter by the ____ day of the month.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.

3.01 Specific Purpose. Except as otherwise limited in the Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, Covered Entity for the following purposes, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity:

3.01.01 Covered Entity contracts with Business Associate for the implementation of the agreement of Covered Entity with employees for the payment of certain deductibles buy downs, reimbursement of specified deductibles and out-of-pocket expenses of employees or members of the family of employees of the Covered Entity.

3.01.02 *(If there is an underlying written service agreement or contract, it should be referenced here.)*

4. SPECIFIC USE AND DISCLOSURE PROVISIONS.

4.01 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

4.02 Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosure are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 the information has been breached.

4.03 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 44 C.F.R. Section 164.504(e)(2)(i)(B).

4.04 Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. Section 164.502(j)(1)

5. OBLIGATIONS AND ACTIVITIES OF COVERED ENTITY.

5.01 Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions.

5.01.01 Covered Entity shall notify Business Associate of any limitation(s) in its notice or privacy practices of Covered Entity in accordance with 45 C.F.R. Section 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

5.01.02 Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

5.01.03 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5.01.04 Covered Entity shall pay Business Associate on a quarterly (*monthly*) basis, on or before the ___ of the month, the amount of _____ (*at the rate of _____*).

6. PERMISSIBLE REQUESTS BY COVERED ENTITY.

6.01 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, including use and disclosure of PHI for data aggregation or management as requested by the Covered Entity, and for administrative activities of Business Associate.

7. TERM AND TERMINATION.

7.01 The term of this Agreement shall be effective as of _____, 2004, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity. If it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Agreement.

8. TERMINATION FOR CAUSE. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- 8.01 Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- 8.02 Immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
- 8.03 If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

9. EFFECT OF TERMINATION.

- 9.01 Except as provided in paragraph 9.02 of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 9.02 In the event Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

10. MISCELLANEOUS PROVISIONS.

- 10.01 **Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- 10.02 **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- 10.03 **Survival.** The respective rights and obligations of Business Associate under Section 9 of this Agreement shall survive the termination of this Agreement.
- 10.04 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.
- 10.05 **Choice of Law.** This Agreement shall be governed by the laws of the State of Idaho.

10.06 Change of Address. Either party may at any time change its address for notification purposes by mailing a notice stating the change and giving the new address.

10.07 Entire Agreement. This Agreement consists of this document, and is the entire agreement between the parties regarding compliance with the Privacy Rule. There are no other agreements that are not fully stated in this Agreement and no change, release, or discharge of responsibilities arising under this Agreement shall be valid unless it is in writing and carried out by the party against whom such change, release, or discharge is sought to be enforced.

10.08 Independent Contractor. The relationship of Covered Entity and Business Associate is that of independent contractors. All acts performed by Business Associate shall be deemed to be performed in its capacity as an independent contractor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

COVERED ENTITY: _____ SCHOOL DISTRICT NO. ____

By _____
Chairman
Board of Trustees

BUSINESS ASSOCIATE: _____

By _____
Its _____