

**HIPAA**

**HEALTH INFORMATION  
PRIVACY PROCEDURES**

**FOR**

**MEDICAL SAVINGS INSURANCE COMPANY**

**AND**

**THE NATIONAL ORGANIZATION OF LIFE AND HEALTH  
INSURANCE GUARANTY ASSOCIATIONS**

## I. INTRODUCTION

### A. Overview

The member guaranty associations of the National Organization of Life and Health Insurance Guaranty Associations (NOLHGA) and Medical Savings Insurance Company (MSIC) have voluntarily adopted these Privacy Procedures to safeguard protected health information (PHI). These Privacy Procedures include the attached.

### B. Purpose of These Privacy policies.

These privacy policies for the protection of the privacy of PHI are intended to comply with the requirements of the federal Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), regulations under HIPAA, and any applicable state law that is more stringent than the HIPAA requirements. They are designed to comply with the standards, implementation specifications, and other requirements of the HIPAA security and privacy regulations at 45 CFR Part 160 and Part 164.

In all instances, these privacy policies shall be interpreted and construed consistent with the requirements of HIPAA, its regulations, and any more stringent state law.

In the event of any conflict between a provision of these privacy policies and a requirement of HIPAA, a regulation under HIPAA, or a more stringent state law, that HIPAA, HIPAA regulation, or state law requirement shall control.

### C. Effectiveness.

The terms of these Privacy Procedures will become effective for a given insolvency immediately upon the entry of a liquidation order with a finding of insolvency in that case and will apply to the PHI of all individuals.

Any applicable person that receives or creates PHI through or on behalf of NOLHGA and/or MSIC in connection with a potential insolvency (i.e., prior to the entry of a liquidation order) shall maintain such information as confidential, except that disclosure of such information may be made (1) to

representatives of NOLHGA and/or MSIC or (2) as otherwise authorized by NOLHGA and/or MSIC.

## **II. PROTECTED HEALTH INFORMATION**

### **A. What is “Protected Health Information”?**

“Protected health information” is any health information maintained by Medical Savings Insurance Company that is individually identifiable except employment records held by Medical Savings Insurance Company in its role as an employer.

“Individually identifiable health information” means any health information, including demographic information, whether oral or recorded in any form or medium, including demographic information collected from an individual, that:

- Is created or received by health care provider, a health plan, employer or health care clearinghouse;
- 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
- Identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

## **III. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.**

An individual’s PHI may only be disclosed in certain circumstances, including disclosures to the affected individual; to the parents of an affected individual who is a dependent under the age of 18; to third parties upon the written authorization of the affected individual; for purposes of treatment, claims payment or health care operations; to family or friends with the affected individual’s consent or in an emergency; to authorized business associates, and any other circumstances described in this Section.

When a NOLHGA or MSIC representative receives a request for the use or disclosure of PHI, the recipient should forward the request to the privacy official or other persons authorized by the privacy official to respond to such requests. The privacy official or other authorized person should evaluate the request and

document any actions taken, by following the procedures set out below in this Section II.

A. Determine Whether the Requested Use or Disclosure Falls into One of These Permitted Categories.

Before making any use or disclosure of PHI, determine whether the use or disclosure satisfies one of these permitted categories:

To Individuals

If an individual (or the executor, administrator, or other personal representative of the deceased individual's estate) requests his or her own PHI, refer to the procedures for Access of Individuals to PHI in Section IV.A.

For Treatment, Payment, and Health Care Operations

If PHI is requested for purposes of treatment, payment, or health care operations of Medical Savings Insurance Company or NOLHGA, the requested PHI (except psychotherapy notes) may be used or disclosed as follows.

- ✓ The minimum necessary PHI may be used or disclosed internally for purposes of payment or health care operations.
- ✓ The requested PHI may be disclosed to a provider for treatment purposes.
- ✓ The minimum necessary PHI may be disclosed to another health care entity for the payment purposes of the other health care entity, or to conduct quality assessment and improvement activities, if NOLHGA and the health care entity have a relationship with the individual and the PHI is relevant to the relationship.

To Business Associates

If PHI is requested for use by or disclosure to a business associate, determine whether the business associate has entered into a contract that contains terms concerning the use or disclosure of PHI that are substantially similar to the Business Associate Contract Terms (Form 1). Determine whether the request is limited to the minimum necessary information.

To Family and Friends

If a family member, friend, or other person requests an individual's PHI to help with the individual's health care or payment, determine whether the disclosure may be made because the individual (a) has agreed to the

disclosure; (b) is a dependent under the age of 18; (c) has not objected to the disclosure after having had an opportunity to do so; or (d) is unavailable due to emergency or incapacity and the disclosure is in the best interests of the individual. The disclosure should be limited to the minimum necessary information.

#### As Required by Law

If PHI is requested on the grounds that its disclosure is required by law (including, without limitation, disclosure to state insurance regulators or pursuant to workers compensation laws), determine whether the requested disclosure is required by law and complies with and is limited to the relevant requirements of the law. In the case of disclosures mandated by legal process or proceedings, it may be necessary to notify the individual of the request and obtain a protective order with respect to the information disclosed. State laws may require additional steps be taken. Before responding to a disclosure request required by law, consult with legal counsel.

#### For Law Enforcement Purposes

Determine whether the requesting entity is an authorized law enforcement official. Because only limited disclosures may be made in specified circumstances, consult with the privacy official and/or legal counsel prior to responding to the request.

#### For Military, National Security, and Similar Governmental Functions

If PHI is requested by the military personnel, national security or intelligence agencies, or similar governmental entities for purposes of carrying out their specialized governmental functions, determine whether the request is seeking information relevant to the permitted purpose and is limited to the minimum necessary information.

#### Regarding Victims of Abuse, Neglect or Domestic Violence

If it is reasonable to believe that an individual is a victim of abuse, neglect or domestic violence, determine whether any of the following circumstances are present:

- ✓ The disclosure is required by law and complies with and is limited to the relevant requirements of the law;
- ✓ The individual agrees to the disclosure;
- ✓ The disclosure is authorized by law and the disclosure is necessary to prevent serious harm to the individual or others; or
- ✓ The disclosure is authorized by law, the individual is unable to agree because of incapacity, an authorized public official represents that the

PHI is not intended to be used against the individual, and that immediate enforcement activity is necessary and depends on the disclosure and would be materially and adversely affected by waiting until the individual is able to agree.

The individual (or personal representative) must be notified that a disclosure has been or will be made, unless notification would place the individual at risk.

#### To Avert Serious Threat to Health or Safety

If a PHI disclosure is being considered to avert a serious health or safety threat, determine whether the disclosure is (a) necessary to prevent or lessen a serious and imminent threat to the health or safety of a person or the public, (b) made to a person reasonably able to prevent or lessen the threat, and (c) limited to the minimum necessary information.

#### For Public Health Activities

If PHI is requested by public health authorities for purposes of controlling disease, injury or disability, determine whether the requesting authorities are authorized by law to receive the requested PHI, the request is seeking information relevant to the permitted purpose and is limited to the minimum necessary information.

#### For Health Oversight Activities

If PHI is requested by an agency authorized to oversee the health care system or entities subject to health-related government regulation, determine whether the request is for oversight activities authorized by law and is limited to the minimum necessary information. Note that a health oversight activity does not include an investigation or other activity in which the individual is the subject of the investigation or activity and the investigation or activity is not related to the receipt of health care.

#### With Respect to Decedents

If PHI is requested by a coroner, medical examiner, funeral director, or organ procurement organization to carry out their lawful duties, determine whether the request is consistent with applicable law and limited to the minimum necessary information.

### B. Written Authorizations

If a use or disclosure of PHI does not fall into any of the permitted categories, the PHI may be used or disclosed if authorized, in writing, by the affected individual.

### General

Use the Authorization To Use or Disclose PHI form (Form 2). Provide a signed copy of the authorization to the individual.

### Third Party Authorizations

Verify and document a personal representative's authority to sign an authorization for an individual.

### Multiple Authorizations

Authorization for one disclosure may be combined with authorization for other disclosures, except authorizations for use or disclosure of psychotherapy notes may not be combined with other authorizations unless they also relate to psychotherapy notes.

### Revocation

An individual may revoke an authorization, in writing.

### Defective or Expired Authorizations

Do not use or rely upon an authorization that is defective, false, incomplete, revoked or has expired.

### Records

Forward copies of authorizations, whether in written or electronic form, to the privacy official.

## C. Determine Whether the Requested Use or Disclosure is subject to a Special, Agreed Restriction

Before approving the use or disclosure of any individual's PHI, determine whether the disclosure is subject to a special agreement with that individual that restricts the use or disclosure of PHI. (See page 8, Section D – If the Individual Requests Restrictions on Uses and Disclosures of Protected Health Information).

## D. Verify the Identity and Authority of the Person Requesting PHI

Before complying with a request for PHI, verify the identity and authority of the person who has submitted the request. If the request involves a disclosure that requires completion of a Disclosure Record (Form 3), as provided in E below, record the following information on, or attach the following documents, to the Disclosure Record.

#### Identity

Record how the identity was verified (for example, by confirming Social Security number, policy number, date of birth, or similar individual information) or retain copies of identification documents presented (for example, driver's license, passport, or other picture identification).

#### Authority

If the request comes from a person purporting to be authorized to have access to another individual's PHI under these Procedures, record the basis for that claimed authority or retain copies of authorizing documents (for example, letters testamentary of or administration with respect to a deceased individual, power-of-attorney form, subpoena or court order, law enforcement badge or identification card, or similar authorizing document).

#### E. Report the Disclosure to the Privacy Official

Report to the privacy official, by completing Disclosure Record (Form 3), every disclosure of PHI, except as provided below.

- ✓ Complete the Disclosure Record (Form 3) for each disclosure of PHI except for disclosures: (i) to the individual, (ii) to carry out treatment, payment, or health care operations, or (iii) pursuant to a written authorization.
- ✓ Forward each Disclosure Record to the privacy official or to his or her designee.

Note: For disclosures to a business associate pursuant to an agreement that contain terms substantially similar to Business Associate Contract Terms (Form 1), the disclosures need only be reported once to the privacy official.

#### IV. Requests from Individuals

Covered individuals may request an opportunity to review and receive copies of their PHI; the amendment of their PHI; an accounting of disclosures of their PHI;

additional restrictions on the use and disclosure of their PHI; and the use of confidential or alternative means to communicate with them regarding their PHI.

If a NOLHGA or MSIC representative receives one of the following requests from an individual with respect to the individual's own PHI, the recipient should forward the request to the privacy official or other authorized person. The privacy official or other authorized person should respond to the request consistent with the following procedures.

A. If the Individual Requests Access to His or Her Own Protected Health Information:

- If an individual asks to see or make copies of the individual's own PHI, instruct the individual to complete the Request for Access to PHI (Form 4).
- For a request for records maintained on site, respond to the request within 30 days. For a request for records maintained off site, respond within 60. If unable to respond within these time periods, notify the individual of the reasons for the delay and the date by which the response will be made.
- If the request is denied, in whole or in part, complete the Response to Request for Access to PHI (Form 5) accordingly and send it to the individual. Send a copy of the form to the privacy official or other authorized representative maintaining the record.
- If the request is granted, in whole or in part, complete the Response to Request for Access to PHI (Form 5) accordingly and send it to the individual. Send a copy of the form to the privacy official or other authorized representative maintaining the record.
  - ✓ Provide the individual with access to the PHI in the form or format requested by the individual, if it is readily producible in that form or format; or, if not, in a readable hard copy or other form or format agreed to by the individual.
  - ✓ If it would be more efficient, and if the individual agrees, provide the individual with a summary of the PHI or an explanation of the PHI.
  - ✓ If NOLHGA does not maintain the PHI but you know where the requested information is maintained, tell the individual where to direct the request for access.
- If the individual requests review of a denial, promptly refer the request for review to the privacy official or other authorized representative. The reviewing official must determine, within a reasonable period of time, whether or not to deny the access requested. Promptly provide written notice to the individual of the reviewing official's

determination and take necessary action to carry out the reviewing official's determination.

B. If the Individual Requests an Amendment of Protected Health Information:

Receiving Requests

If an individual makes a request that PHI records be amended, have the individual complete and sign the Request to Amend PHI (Form 6). Provide the individual a copy of the completed form upon request and forward the completed form to the privacy official.

Acting on the Request

The privacy official, or other designated representative, will act on the request no later than 60 days after receipt, including completion of the Request to Amend PHI.

Granting of the Request

If the requested amendment is granted, in whole or in part, take the following actions:

- Make the appropriate amendment to the PHI and related records by amending each record or by cross-referencing all affected records to the location of the amendment.
- Notify those persons who, as identified by the individual, possess related PHI records and who may rely or have relied on them to the detriment of the individual.
- Timely inform the individual that the amendment has been accepted.

Denial of Request

If the requested amendment is denied, in whole or in part, take the following actions:

Provide the individual with a timely written denial.

At the same time, notify the individual of his or her rights to submit a written statement disagreeing with the denial, to request that the individual's request for amendment and denial be provided with any future disclosures of the affected PHI, or to file a complaint with the contact person.

Statement of Disagreement

If the individual submits a written statement disagreeing with the denial, determine whether to accept or deny the requested amendment and take the following actions:

- If the requested amendment is granted, notify the individual and other known holders of affected PHI by following the procedures described in paragraph (Granting the Request).
- If the requested amendment is again denied:
  - ✓ Prepare a written rebuttal to the individual's statement of disagreement, and deliver a copy to the individual;
  - ✓ Identify the PHI related records and append or cross-reference the records to the location of the individual's amendment request, the denial, the individual's statement of disagreement, and the rebuttal.

#### Request for Inclusion of Request in Subsequent Disclosures

If the individual so requests, include the individual's amendment request and denial, or an accurate summary of that information, with any subsequent disclosure of the affected PHI.

#### Notification of Amendment from Another Health Care Entity

If informed by another health care entity of a valid amendment to an individual's PHI, amend the affected PHI and related records.

### C. If the Individual Requests an Accounting of Disclosures of Protected Health Information:

- If an individual requests an accounting, have the individual complete the Request for Accounting of Disclosures of PHI (Form 7). Keep a copy of the form and send a copy to each business associate that may have disclosed the PHI.
- Respond to the request for an accounting within 60 days of receipt by completing the Disclosure Accounting (Form 8). Attach copies of the Disclosure Record (Form 3) prepared for each disclosure of the individual's PHI for the accounting period, except for those disclosures pursuant to a written authorization or for which a disclosure record is not required (to the individual, for purposes of treatment, payment or health care operations, pursuant to a written authorization, or for other reasons identified on the Disclosure Accounting (Form 8)). Also, Attach copies of disclosure records submitted by business associates.

- If a governmental agency or official directs that NOLHGA suspend the individual's right to an accounting of disclosures to that agency or official, inform the agency or official that any suspension based on its oral direction cannot exceed 30 days, unless further direction is received in writing. During any temporary suspension of the individual's accounting rights, continue to document the disclosures.

D. If the Individual Requests Restrictions on Uses and Disclosures of Protected Health Information:

- Individuals may request restrictions on the use or disclosure of their PHI. Upon receipt of a request, instruct the individual to complete the Restriction Request (Form 9). There is no obligation to agree to additional restrictions. The additional restrictions will not be binding unless agreed to in writing by the privacy official.
- If the request is denied, complete the response portion accordingly and send it to the individual.
- If the request is granted, complete the response portion accordingly and send it to the individual.
  - ✓ Document the restriction. Formal documentation of the restriction is not required. It is sufficient, for example, to simply note the restriction in the applicable health record.
  - ✓ Send a copy of the completed form to any business associate or other entity with access to the restricted PHI.
  - ✓ Follow the restriction unless (a) the individual needs emergency treatment and the disclosure of the restricted PHI is required to provide the emergency treatment (request that the health care provider to disclose the PHI further), (b) the individual gives written authorization to use or disclose the PHI, or (c) the disclosure is required by law.
- An individual may terminate the restriction at any time.
- If a restriction is terminated, notify the individual, the business associate, and other entities with access to the PHI.

E. If the Individual Requests Confidential Communications of PHI

- If required to avoid danger to themselves, individuals may request in writing that communications concerning their PHI be sent to them by means other than their contact information provided in the records. Instruct the individual to complete the Confidential Communication Request (Form 10).
- If it is reasonable to accommodate the request, and the individual has satisfactorily completed Form 10, complete the Disposition of Request portion on the Confidential Communication Request and

send it to the individual. Also notify any business associate or other entity with access to the PHI subject to the confidential treatment.

- If the request is denied, complete the Disposition of Request portion on the Confidential Communication Request and send it to the individual.
- Forward a copy of the form to the privacy official.

## V. General Administration

### A. Responsibility

The privacy official and other authorized persons will be responsible for administering these Procedures on behalf of NOLHGA.

### B. Application Limited to Health Coverage

To the extent that NOLHGA has coverage responsibilities in lines of business other than health (for example, annuities, life insurance, and disability benefits), these Privacy Procedures will apply only to the health lines.

### C. Privacy Official and Contact Person

NOLHGA will designate a privacy official to be responsible for implementing these Privacy Procedures and a contact person to receive communications from covered individuals, using the Administrative Designations form (Form 11). The Privacy Official and the contact person may designate others to perform, on their behalf, procedures prescribed by these Procedures.

### D. Authorized Personnel

Assigned NOLHGA and MSIC staff and designated consultants are authorized to have access to PHI.

The privacy official will designate any other personnel who are authorized to have access to PHI on behalf of NOLHGA or MSIC and those personnel who are responsible for receiving and processing requests by individuals to access PHI, to amend PHI, or to provide disclosure accounts of an individual's PHI on the Administrative Designations form (Form 11).

### E. Training

Each person authorized to access, use or disclose PHI will become familiar with these Privacy Procedures and understand his or her responsibilities prior to having any access to or use of PHI.

The privacy official, working with NOLHGA and MSIC staff, will arrange for authorized persons to receive training on the Privacy Procedures as follows:

- Authorized persons will receive training on applicable policies and procedures relating to PHI as necessary and appropriate to carry out their functions.
- Newly authorized persons will receive training within a reasonable time after becoming authorized.
- Authorized persons whose functions are impacted by a material change in the policies and procedures relating to PHI, or by a change in position or job description, will receive training within a reasonable time after the change becomes effective.

#### F. Safeguards

The privacy official will ensure that these administrative, technical and physical safeguards are followed.

- The paper records that contain PHI, when being used, will be under the direct custody and control of authorized personnel and will not be readily visible to unauthorized personnel. When not in use, those paper records will be kept in locked storage accessible only to authorized personnel. If authorized personnel determine that certain paper records should no longer be retained, those records will be shredded.
- All electronic records that contain PHI will be secured by password protection. Access will be limited to those authorized personnel. When electronic records are being viewed by authorized personnel on computer monitors, monitor screens will be situated to ensure that they are not readily readable by unauthorized personnel. The privacy official will also ensure that business associates who process electronic PHI agree to adopt administrative, technical and physical safeguards to protect the confidentiality, integrity, and availability of electronic PHI.
- Authorized personnel will take all reasonable steps to ensure the privacy of all conversations and telephone communications involving PHI.

#### G. Business Associates

On behalf of NOLHGA and MSIC, the privacy official should identify all business associates who will receive PHI on their behalf and ensure that each business associate has entered into a contract that contains the necessary Business Associate Contract Terms (Form 1).

#### H. Notice of Privacy Procedures

Within a reasonable time, NOLHGA and MSIC will give covered individuals notice of these Privacy Procedures.

The privacy official will be responsible for complying with the following notification requirements on behalf of NOLHGA and MSIC:

- Provide all covered individuals the Notice of Privacy Procedures (Form 12);
- If a material change is made in the Notice of Privacy Procedures, provide the revised notice to covered individuals and families within 60 days of the material change.
- Every three years, notify individuals who continue to be covered of the availability of the Notice of Privacy Procedures and how to obtain this notice.
- Maintain records to reflect the sending of the Notice of Privacy Procedures.

#### I. Retention of Records

The privacy official will cause copies of communications, actions, activities or designations required under these Procedures to be retained in accordance with the following procedures.

- Establish a filing system to retain and retrieve all of the privacy compliance records. The records may be kept in paper form or electronic form.
- Maintain all privacy compliance records for a minimum of six years from the later of the date of creation or the last effective date of the record.
- Destroy all privacy compliance records that are no longer required to keep under these procedures.
- Identify those entities that will be responsible for maintaining privacy compliance records following the end of active proceedings.

#### J. No Waiver Conditions

NOLHGA and MSIC will not require individuals to waive protections under these Privacy Procedures as a condition of treatment or payment of benefits.

#### K. No Retaliation

NOLHGA and MSIC will not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any individual for exercising protections under these Privacy Procedures; testifying, assisting or participating in a privacy-related investigation, compliance review,

proceeding or hearing; or opposing any act or practice that the individual in good faith believes to be inconsistent with these Privacy Procedures.

#### L. Mitigation and Sanctions

To the extent practical, NOLHGA and MSIC will mitigate any harmful effects of unauthorized uses or disclosures of PHI. An applicable person who has reasonable knowledge that these Privacy Procedures have been violated must report the violation to the privacy official. An applicable person who is a natural person and who violates these Privacy procedures will be subject to appropriate disciplinary action.

#### M. No Private Right of Action

Individuals with PHI subject to these Privacy Procedures may file complaints and appeals in accordance with these Privacy Procedures, but these Privacy Procedures do not create any contractual rights or any right of action on the part of an individual to enforce or seek relief under these Privacy Procedures in any judicial or other proceeding.

#### N. Additional Requirements

If any state law requirements affect the use or disclosure of PHI by persons acting on behalf of Medical Savings Insurance Company, NOLHGA should be notified so these Procedures can be conformed, as appropriate, to comply with the applicable requirements.

#### O. Changes – Interpretation

The guaranty associations, acting through NOLHGA, reserve the right, at any time, to modify the terms of these Privacy Procedures. Technical modifications that do not substantively change the terms of these Procedures may be made with the approval of the President of NOLHGA. The NOLHGA President shall have supervisory authority to ensure that these Privacy Procedures are carried out and to resolve disputes concerning the Procedures' meaning, interpretation, and application.

### VI. Question and Complaint Procedure

The contact person will receive and respond to questions and complaints about these Privacy Procedures. Individuals will not be penalized in any way for filing a complaint.

The contact person will ensure that questions and complaints are promptly and appropriately answered. For complaints, the contact person and any other personnel designated by the contact person should follow these procedures:

A. Document Each Complaint

If an individual communicates a privacy complaint, document and report the complaint by having the individual write, sign, and submit the written complaint. Upon request, provide a copy of the completed complaint form to the individual who lodged it. Forward the completed complaint form to the privacy official.

B. Investigate and Decide Each Complaint

The privacy official, or other representatives under his or her direction, must conduct a fair and reasonable investigation of the complaint, make a decision about the complaint, and record that decision in writing.

C. Communicate the Decision to the Individual

Communicate the decision to the individual in writing.

