

FRANKLIN CENTRAL SUPERVISORY UNION AND ITS MEMBER SCHOOL DISTRICTS

COMMON PROCEDURE FOR HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT COMPLIANCE D13

I. Summary

The Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191, was enacted on August 21, 1996. Sections 261 through 264 of HIPAA require the Secretary of HHS to publicize standards for the electronic exchange, privacy and security of health information. Collectively these are known as the *Administrative Simplification* provisions.

The Administrative Simplification standards adopted by Health and Human Services (HHS) under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) apply to any entity that is a:

- health care provider that conducts certain transactions in electronic form (called here a "covered health care provider").
- health care clearinghouse.
- health plan.

An entity that is one or more of these types of entities is referred to as a "covered entity" in the Administrative Simplification regulations.

Who is Covered by the Privacy Rule: The Privacy Rule, as well as all the Administrative Simplification rules, apply to health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA (the "covered entities").

Covered Entity: Guidance on how to determine whether an entity is a covered entity under the Administrative Simplification provisions of HIPAA is available at:

<http://www.hhs.gov/ocr/privacy/hipaa/understanding/summary/index.html>

Health Plans. Individual and group plans that provide or pay the cost of medical care are covered entities. Health plans include health, dental, vision, and prescription drug insurers, health maintenance organizations ("HMOs"), Medicare, Medicaid, Medicare+ Choice and Medicare supplement insurers, and long-term care insurers (excluding nursing home fixed-indemnity policies). Health plans also include employer-sponsored group health plans, government and church-sponsored health plans, and multi-employer health plans. There are exceptions—a group health plan with less than 50 participants that is administered solely by the employer that established and maintains the plan is not a covered entity. Two types of government-funded programs are not health plans: (1) those whose principal purpose is not providing or paying the cost of health care, such as the food stamps program; and (2) those programs whose principal activity is directly providing health care, such as a community health center, or the making of grants to fund the direct provision of health care. Certain types of insurance entities are also not health plans, including entities providing only workers' compensation, automobile insurance, and property and casualty insurance. If an insurance entity has separable lines of business, one of

which is a health plan, the HIPAA regulations apply to the entity with respect to the health plan line of business.

Protected Health Information: The Privacy Rule protects all "*individually identifiable health information*" held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper, or oral. The Privacy Rule calls this information "protected health information (PHI)." "Individually identifiable health information" is information, including demographic data, that relates to:

- the individual's past, present or future physical or mental health or condition,
- the provision of health care to the individual, or
- the past, present, or future payment for the provision of health care to the individual,
- and that identifies the individual or for which there is a reasonable basis to believe it can be used to identify the individual. Individually identifiable health information includes many common identifiers (e.g., name, address, birth date, Social Security Number).

The Privacy Rule excludes from protected health information employment records that a covered entity maintains in its capacity as an employer and education and certain other records subject to, or defined in, the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g.

De-Identified Health Information: There are no restrictions on the use or disclosure of de-identified health information. De-identified health information neither identifies nor provides a reasonable basis to identify an individual. There are two ways to de-identify information; either: (1) a formal determination by a qualified statistician; or (2) the removal of specified identifiers of the individual and of the individual's relatives, household members, and employers is required, and is adequate only if the covered entity has no actual knowledge that the remaining information could be used to identify the individual.

The complete suite of HIPAA Administrative Simplification Regulations can be found at 45 CFR Parts 160, 162, and 164.

II. HIPAA Privacy Notice

According to the Privacy Rule, we may be required to provide notification to employees. The notice must describe the ways in which we may use and disclose protected health information. The notice must state our duty to protect privacy, provide a notice of privacy practices, and abide by the terms of the current notice. The notice must describe individuals' rights, including the right to complain to HHS and to FCSU if an employee believes their privacy rights have been violated. The notice must include a point of contact for further information and for making complaints to FCSU.

FCSU must supply notice to anyone on request and will make our notice electronically available on the FCSU web site (*see appendix A of this document.*)

III. Administrative Requirements

1. **Privacy Policies and Procedures:** FCSU, as a covered entity, has developed and implemented these written privacy policies and procedures that are consistent with the Privacy Rule.
2. **Privacy Personnel:** FCSU has designated a person responsible for developing and implementing its privacy policies and procedures, and a contact person responsible for receiving complaints and providing individuals with information on the covered entity's privacy practices.
3. **Mitigation:** FCSU will mitigate, to the extent practicable, any harmful effect it learns was caused by use or disclosure of protected health information by its workforce or its business associates in violation of its privacy policies and procedures or the Privacy Rule.
4. **Data Safeguards:** FCSU will endeavor to maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent intentional or unintentional use or disclosure of protected health information in violation of the Privacy Rule and to limit its incidental use and disclosure pursuant to otherwise permitted or required use or disclosure. For example, such safeguards might include shredding documents containing protected health information before discarding them, securing medical records with lock and key or pass code, and limiting access to keys or pass codes.
5. **Complaints:** FCSU has a procedure for individuals to complain about its compliance with its privacy policies and procedures and the Privacy Rule. FCSU explains those procedures in its privacy practices notice and identifies to whom individuals can submit complaints to at FCSU and further advises that complaints also can be submitted to the Secretary of HHS. (*see Appendix A*).
6. **Retaliation and Waiver:** Retaliate against a person for exercising rights provided by the Privacy Rule, for assisting in an investigation by HHS or another appropriate authority, or for opposing an act or practice that the person believes in good faith violates the Privacy Rule is prohibited. Further, an individual may not be required to waive any right under the Privacy Rule as a condition for obtaining treatment, payment, and enrollment or benefits eligibility.
7. **Documentation and Record Retention:** FCSU will maintain, until six years after the later of the date of their creation or last effective date, its privacy policies and procedures, its privacy practices notices, disposition of complaints, and other actions, activities, and designations that the Privacy Rule requires to be documented.
8. **Workforce Training and Management:** FCSU will provide training for all workforce members on its privacy policies and procedures, as necessary and appropriate for them to carry out their functions. Workforce members include employees, volunteers, trainees, and may also include other persons whose conduct is under the direct control of the entity (whether or not they are paid by the entity). FCSU will have and apply appropriate sanctions against workforce members who violate its privacy policies and procedures or the Privacy Rule.

II. Health Information Recordkeeping Practice

Health information, regardless of origination, shall be placed in separate, confidential file with access limited by the FCSU Benefits Coordinator to those with a legitimate business need to know. Health information shall only be sought in direct response to a need for documentation supporting a leave of absence of more than three (3) days, or as a legitimate business need dictates.

The FCSU, its member schools, or the insurance carriers will not request health information in order for an employee to apply for health or dental insurances. Health information or claim information specific to an employee will not be shared by the insurance carriers with the FCSU business office.

If a legitimate need arises for information, it will be officially requested directly by the Superintendent/Designee, or the Benefits Coordinator.

FCSU and its member schools reserves its right to seek health information for business reasons including, but not limited to: Workers Compensation claims, ADA requests for job modifications, and FMLA/VPLL.

Franklin Central Supervisory Union Flexible Spending Account Plan

HIPAA PRIVACY NOTICE

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

If you have any questions about this notice, please contact:

**Germaine Cross, Benefits Coordinator
Franklin Central Supervisory Union
28 Catherine Street, St. Albans, Vermont 05478
Phone: 802-524-2600, ext. 17**

WHO WILL FOLLOW THIS NOTICE

In the course of providing you with a health care reimbursement account under the Flexible Spending Account Plan, the Plan will have access to information about you that is deemed to be "protected health information," or PHI, by the Health Insurance Portability and Accountability Act of 1996, or HIPAA. The procedures outlined in this section have been added to the Plan to ensure that your PHI is treated with the level of protection required by HIPAA. This notice describes the medical information practices of Franklin Central Supervisory Union Flexible Spending Account Plan (the "Plan") and that of any third party that assists in the administration of Plan claims.

OUR PLEDGE REGARDING MEDICAL INFORMATION

We understand that medical information about you and your health is personal. We are committed to protecting medical information about you. We create a record of the health care claims reimbursed under the Plan for Plan administration purposes. This notice applies to all of the medical records we maintain. Your personal doctor or health care provider may have different policies or notices regarding the doctor's use and disclosure of your medical information created in the doctor's office or clinic.

This notice will tell you about the ways in which we may use and disclose medical information about you. We also describe your rights and certain obligations we have regarding the use and disclosure of medical information.

We are required by law to:

- make sure that medical information that identifies you is kept private;
- give you this notice of our legal duties and privacy practices with respect to medical information about you; and
- follow the terms of the notice that is currently in effect.

Your PHI may be disclosed to certain employees of your Employer. These employees are: Superintendent, Business Manager, Human Resources Director, Payroll and Benefits Coordinators. These individuals may only use your PHI for Plan administration functions including those described below, provided they do not violate the provisions set forth herein. Any employee of your Employer who violates the rules for handling PHI established herein will be subject to adverse disciplinary action.

The Employer has certified that it will comply with the privacy procedures set forth herein. Your Employer may not use or disclose your PHI other than as provided herein or as required by law. Any agents or subcontractors who are provided your PHI must agree to be bound by the restrictions and conditions concerning your PHI found herein. Your PHI may not be used by the Employer for any employment-related actions or decisions or in connection with any other benefit or employee benefit plan of the Employer. The Employer must report to the Plan any uses or disclosures of your PHI of which the Employer becomes aware that are inconsistent with the provisions set forth herein.

HOW WE MAY USE AND DISCLOSE MEDICAL INFORMATION ABOUT YOU.

The following categories describe different ways that we use and disclose medical information for purposes of Plan administration.

For adjudication of claims: We review medical information about you to determine your eligibility for receipt of benefits under the Plan. For example, we will review your expense receipts to ensure that the expense is an allowable Plan expense and if it is eligible for reimbursement to you by the Plan. We may share medical information with another entity to assist with the adjudication or subrogation of claims or to another health plan to coordinate benefit payments.

As Required By Law: We will disclose medical information about you when required to do so by federal, state or local law.

To Avert a Serious Threat to Health or Safety: We may use and disclose medical information about you when necessary to prevent a serious threat to your health and safety or the health and safety of the public or another person. Any disclosure, however, would only be to someone able to help prevent the threat.

Disclosure to Health Plan Sponsor: Information may be disclosed to another health plan maintained by your Employer for purposes of facilitating claims payments under that plan. In addition, medical information may be disclosed to your Employer's personnel solely for purposes of administering benefits under the Plan.

YOUR RIGHTS REGARDING MEDICAL INFORMATION ABOUT YOU.

You have the following rights regarding medical information we maintain about you:

Right to Inspect and Copy: You have the right to inspect and copy medical information that may be used to make decisions about your Plan benefits. To inspect and copy medical information that may be used to make decisions about you, you must submit your request in writing to the Employer contact specified at the top of page 1 of this Notice. If you request a copy of the information, we may charge a fee for the costs of copying, mailing or other supplies associated with your request. The requested information will be provided within 30 days if the information

is maintained on site or within 60 days if the information is maintained offsite. A single 30-day extension is allowed if the Plan is unable to comply with the deadline.

Right to Amend: If you feel that medical information we have about you is incorrect or incomplete, you may ask us to amend the information. You have the right to request an amendment for as long as the information is kept by or for the Plan.

To request an amendment, your request must be made in writing and submitted to the party indicated at the top of page one of this Notice. In addition, you must provide a reason that supports your request.

We may deny your request for an amendment if it is not in writing or does not include a reason to support the request. In addition, we may deny your request if you ask us to amend information that:

- Is not part of the medical information kept by or for the Plan;
- Was not created by us, unless the person or entity that created the information is no longer available to make the amendment;
- Is not part of the information which you would be permitted to inspect and copy; or
- Is accurate and complete.

Your Employer must act on your request for an amendment of your PHI no later than sixty (60) days after receipt of your request. Your Employer may extend the time for making a decision for no more than thirty (30) days, but it must provide you with a written explanation for the delay. If your Employer denies your request, it must provide you a written explanation for the denial and an explanation of your right to submit a written statement disagreeing with the denial.

Right to an Accounting of Disclosures: You have the right to request an "accounting of disclosures" (other than disclosures you authorized in writing) where such disclosure was made for any purpose other than treatment, payment, or health care operations.

To request this list or accounting of disclosures, you must submit your request in writing to the party noted at the top of page 1 of this Notice. Your request must state a time period which may not be longer than six (6) years and may not include dates before April 2004. Your request should indicate in what form you want the list (for example, on paper, electronically). The first list you request within a twelve (12) month period will be free. For additional lists, we may charge you for the costs of providing the list. We will notify you of the cost involved and you may choose to withdraw or modify your request at that time before any costs are incurred.

Note that HIPAA provides several important exceptions to your right to an accounting of the disclosures of your PHI. Your Employer will not include in your accounting any of the disclosures for which there is an exception under HIPAA. Employer must act on your request for an accounting of the disclosures of your PHI no later than sixty (60) days after receipt of the request. Your Employer may extend the time for providing you an accounting by no more than thirty (30) days, but it must provide you a written explanation for the delay. You may request one accounting in any 12-month period free of charge. Your Employer will impose a fee for each subsequent request within the 12-month period.

Right to a Paper Copy of This Notice: You have the right to a paper copy of this notice. You may ask us to give you a copy of this notice at any time. Even if you have agreed to receive this notice electronically, you are still entitled to a paper copy of this notice.

To obtain a paper copy of this notice, contact the individual listed at the top of page 1 of this Notice.

The Employer must make its internal practices, books and records related to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with these privacy protections.

When the Employer no longer needs PHI disclosed to it by the Plan, for the purposes for which the PHI was disclosed, your Employer must, if feasible, return or destroy the PHI that is no longer needed. If it is not feasible to return or destroy the PHI, the Employer must limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI infeasible.

Changes to This Notice: We reserve the right to change this notice. We reserve the right to make the revised or changed notice effective for medical information we already have about you as well as any information we receive in the future.

Complaints: If you believe your privacy rights have been violated, you may file a complaint with the Plan or with the Secretary of the U.S. Department of Health and Human Services (Hubert Humphrey Building, 200 Independence Ave. S.W, Washington, DC 20201). To file a complaint with the Plan, contact the Plan official listed on page 1 of this Notice. All complaints must be submitted in writing. You will not be penalized for filing a complaint.

OTHER USES OF MEDICAL INFORMATION.

Other uses and disclosures of medical information not covered by this notice or the laws that apply to us will be made only with your written permission. If you provide us permission to use or disclose medical information about you, you may revoke that permission, in writing, at any time. If you revoke your permission, we will no longer use or disclose medical information about you for the reasons covered by your written authorization. You understand that we are unable to take back any disclosures we have already made with your permission, and that we are required to retain our records of the benefits that we provided to you.

Effective Date of this Notice: April 14, 2004.

Reviewed 8/31/11