

# BUTTE SCHOOLS SELF-FUNDED PROGRAMS

## POLICIES & PROCEDURES MANUAL

Subject: **HIPPA RELEASE OF SUMMARY DATA**

Section: **1.20**

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The Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its implementing regulations at 45 Code of Federal Regulations (“C.F.R.”) Parts 160-64 provide guidelines for the appropriate disclosure of a plan participant’s (employee’s, retiree’s or dependent’s) protected health information (PHI). The Butte Schools Self-Funded Programs is a health plan under HIPAA and has accordingly developed policies appropriate to the release of PHI, including historical claims data, to member districts that have participated in the Programs.

### **1. Member District’s Certification of Compliance**

Neither BSSP nor any health insurance issuer or business associate servicing BSSP will disclose plan participants’ PHI to any member district unless such member district certifies that the member district agrees to abide by this policy.

### **2. Purpose of Disclosure**

- (a) BSSP and any health insurance issuer or business associate servicing BSSP will disclose plan participants’ PHI to member district only to permit member district to carry out the following administration functions:
- i. For the purpose of searching or marketing for appropriate employee benefits;
  - ii. Submission of claims data to the US Department of Health and Human Services to see reimbursement for retiree prescription drugs, pursuant to 42 CFR 423 subpart R and related guidance; and
  - iii. Submission of claims data to the US Department of Health and Human Services to see reimbursement for early retiree medical expenses, pursuant to 45 CFR 149 and related guidance.

Any disclosure to and use by member district of plan participants’ PHI will be subject to and consistent with the provisions of this policy and the specifications and requirements of HIPPA.

- (b) Neither BSSP nor any health insurance issuer or business associate servicing BSSP will disclose plan participants’ PHI to member district unless the disclosures are explained in the Privacy Practices Notice distributed to the plan participants.
- (c) Neither BSSP nor any health insurance issuer or business associate servicing BSSP will disclose plan participants’ PHI to member district for the purpose of employment-related actions or decisions or in connection with any other benefit or employee benefit plan of member district.

### **3. Restrictions on Member District’s Use and Disclosure of PHI.**

- (a) Member district will neither use nor further disclose plan participants’ PHI, except as permitted by this policy or as required by law.

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- (b) Member district will ensure that any agent, including any subcontractor, to which it provides plan participants' PHI or electronic PHI agrees to the restrictions, conditions, and security measures of this policy with respect to plan participants' PHI or electronic PHI.
- (c) Member district will not use or disclose plan participants' PHI for employment-related actions or decisions, or in connection with any other benefit or employee benefit plan of member district.
- (d) Member district will report to BSSP any use or disclosure of plan participants' PHI that is inconsistent with the uses and disclosures allowed under this policy promptly upon learning of such inconsistent use or disclosure.
- (e) Member district will make PHI available to BSSP or to the plan participant who is the subject of the information in accordance with 45 C.F.R. § 164.524.
- (f) Member district will make plan participants' PHI available for amendment, and will on notice amend plan participants' PHI, in accordance with 45 C.F.R. § 164.526.
- (g) Member district will track disclosures it may make of plan participants' PHI that are accountable under 45 C.F.R. § 164.528 so that it can make available the information required for BSSP to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
- (h) Member district will make its internal practices, books, and records relating to its use and disclosure of plan participants' PHI available to BSSP and to the U.S. Department of Health and Human Services to determine BSSP's compliance with the HIPAA Privacy Rule at 45 C.F.R. Part 164, Subpart E.
- (i) Member district will, if feasible, return or destroy (and cause its subcontractors and agents to, if feasible, return or destroy) all plan participants' PHI, in whatever form or medium, received from BSSP or any health insurance issuer or business associate servicing BSSP, including all copies thereof and all data, compilations, or other works derived therefrom that allow identification of any participant who is the subject of the PHI, when the plan participants' PHI is no longer needed for the plan administration functions for which the disclosure was made. If it is not feasible to return or destroy all plan participants' PHI, member district will limit (and will cause its subcontractors and agents to limit) the use or disclosure of any plan participants' PHI that cannot feasibly be returned or destroyed to those purposes that make the return or destruction of the information infeasible.

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### **4. Security Measures for Electronic PHI**

- (a) Member district will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of plan participants' electronic PHI that member district creates, receives, maintains, or transmits on BSSP's behalf.
- (b) Member district will report to BSSP, upon BSSP's request, any attempted or successful:
  - i. Unauthorized access, use, disclosure, modification, or destruction of plan participants' electronic PHI or
  - ii. Interference with member district's system operations in member district's information systems, of which member district becomes aware, except any such security incident that results in disclosure of plan participants' PHI or electronic PHI not permitted by the BSSP Document, as amended by this Article, must be reported to BSSP as required by Paragraph 3(d), above.
- (c) Member district will support the adequate separation between member district and BSSP, as specified by Section 5, below, with reasonable and appropriate security measures.

### **5. Adequate Separation Between Member District and BSSP**

- (a) The following employees or classes of employees or other workforce members under the control of member district may be given access to plan participants' PHI received from BSSP or a health insurance issuer or business associate servicing BSSP:
  - i. Superintendent or president
  - ii. Chief business official
  - iii. Member district's representative to the board of directors of the BSSP
  - iv. An employee designated in writing by one of the individuals listed in items i.-iii., above.

This list includes every employee or class of employees or other workforce members under the control of member district who may receive plan participants' PHI relating to payment under, the health care operations of, or other matters pertaining to BSSP in the ordinary course of business.

- (b) The employees, classes of employees or other workforce members identified in Paragraph 5(a), above will have access to plan participants' PHI only to perform the plan administration functions that member district provides for BSSP, as specified in Paragraph 2(a), above.
- (c) The employees, classes of employees or other workforce members identified in Paragraph 5(a), above will be subject to disciplinary action and sanctions, including termination of employment or affiliation with member district, for any

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use or disclosure of plan participants' PHI in breach or violation of or noncompliance with the provisions of this policy. Member district will promptly report such breach, violation or noncompliance to BSSP, as required by Paragraph 3(d), above and will cooperate with BSSP to correct the breach, violation or noncompliance, to impose appropriate disciplinary action or sanctions on each employee or other workforce member causing the breach, violation or noncompliance, and to mitigate any deleterious effect of the breach, violation or noncompliance on any participant, the privacy of whose PHI may have been compromised by the breach, violation or noncompliance.

### **6. Definitions.**

For purposes of this policy, the term "Participant" means an "individual" as defined in 45 C.F.R. §160.103. All terms not defined in this amendment shall have the meaning described in the HIPAA Administrative Simplification Rules.

### **7. Procedures for use of PHI for Marketing of Employee Benefits by Member Districts**

All historical claims data are kept at business associates (Anthem Blue Cross, Medco, Delta Dental, VSP, etc.) who are hired as claims administrators by BSSP. BSSP will facilitate the request from member districts for summary or detailed PHI from business associates as part of the routine bidding process for employee benefits.

- (a) Butte Schools Self-Funded Programs will have a current business associate agreement with its claims administrators that ensures that historical claims data provided is de-identified according to the requirements of HIPAA and relevant California statutes.
- (b) The business associate will provide only the level of detail to BSSP that would be provided to any employer customer of their own fully insured operations.
- (c) Butte Schools Self-Funded Programs will require that a standard request letter be signed by each requesting school district.
  - i. The letter must be signed by an individual identified in paragraph 5.(a), above and be on district letterhead.
  - ii. The requesting letter should contain specific language that sets forth the purpose of the request and certain limitation the use of the data obtained.
  - iii. The letter shall identify all plan participants for which the information is requested.
  - iv. A sample letter is included as Exhibit A.
- (d) BSSP will provide forward the request to the appropriate business associate.

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- (e) The business associate will generate the report and return it to BSSP.
  - i. The report will have been de-identified to the extent required by HIPAA.
  - ii. BSSP will review the data to confirm that it has been de-identified before transmitting the information to requesting school districts. An inadvertent error on the part of the administrators may create a HIPAA penalty risk for BSSP; therefore, a review is appropriate. BSSP will determine that no names, social security or member ID numbers, addresses or other information is in the requested report that would allow a reader to associate a particular health condition with a particular individual.
  
- (f) BSSP will maintain a log to track when such summary health information is requested and transmitted.
  
- (g) BSSP will transmit a standard cover letter with each package of summary health information to each requesting member district with a standard cover letter. The standard cover letter will inform the member district that the enclosed information should be used only for the purposes of shopping for insurance and bidding for new health insurance. It will confirm that the receiving school district has promised in their request that it will keep PHI separate from any other human resources records. It will also confirm that managers responsible for the promotion or review of employees will not have access to the information provided. A sample transmission letter is included as Exhibit B.
  
- (h) BSSP will not retain any summary health information received from its plan administrators in response to the request of the participating school district.

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**EXHIBIT A**

**Model Request Letter for Use of School Districts**  
(Official Letterhead of Requesting School District)  
(Current Date)

Dear Sir or Madam:

Please accept this letter as our request to obtain historical claims data or summary health information which is required by our district solely for the purpose of obtaining bids for replacement insurance coverage. We affirm that this information will be used solely for the purpose of obtaining bids or modifying plan coverage. Such data will be kept separate from all other personnel records and to the fullest extent possible will not be shared with managers who have responsibility for evaluation and promotion of employees.

Signed by Authorized Employee / Representative of the Requesting School District

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### EXHIBIT B

#### **Model Request Letter**

#### **For Use by Butte Schools Self-Funded Programs**

(Official Letterhead)

(Current Date)

Dear Sir or Madam:

In response to your request dated \_\_\_\_\_, Butte Schools Self-Funded Programs has obtained summary health information from (name of appropriate administrator(s)) and that document is being forwarded to you with this letter. Butte Schools Self-Funded Programs does not keep a copy of this information so in the event of its loss by you a new request will have to be made by your district for another copy. Your request letter confirmed that you "will use this information solely for the purpose of obtaining bids or modifying plan coverage. Such data will be kept separate from all other personnel records and to the fullest extent possible will not be shared with managers who have responsibility for evaluation and promotion of employees".

Signed by Authorized Employee / Representative of Butte Schools Self-Funded Programs