

## ***NHP/NHIC-Privacy & Confidentiality of Member Information & Records***

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### **Abstract/Purpose:**

State, Federal law and the National Committee for Quality Assurance (NCQA) requires a Managed Care Organization (MCO) to ensure that anyone who handles Protected Health Information (“PHI”) maintains its confidentiality. PHI includes medical records, claims, benefits and other administrative data that are personally identifiable. Use of aggregated data in which an individual’s personal information is not identifiable to a statistically significant degree is not subject to privacy restrictions.

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### **I. Policy:**

State, Federal law and the National Committee for Quality Assurance (NCQA) requires a Managed Care Organization (MCO) to ensure that anyone who handles Protected Health Information (“PHI”) maintains its confidentiality. PHI includes medical records, claims, benefits and other administrative data that are personally identifiable. Use of aggregated data in which an individual’s personal information is not identifiable to a statistically significant degree is not subject to privacy restrictions.

Maintaining confidentiality encompasses how PHI is collected, maintained and used. This accountability extends to the entities with which information is shared. Compliance with the policies is demonstrated through audits, employee, employer/plan sponsor, agent, broker and consultant confidentiality agreements, business associate agreements/addendums and external review.

### **II. Procedure:**

#### ***A. Member Consents***

1. A member has the opportunity to determine the appropriate uses of his or her PHI. The member must authorize in writing, the release or refusal to release any and all information; unless required or exempt by law.
2. Consents must specify the type of information to be disclosed, how the information is used, by whom the information will be used, the purpose for which the information is used, the type of healthcare provider making the disclosure and the time period for which the consent applies.

#### **a. Routine Consent:**

The Membership Application signed by the employee at the

time of enrollment covers future, known or routine needs for uses of PHI. It does not provide for release of information beyond the uses specified on the application.

Example: Uses specified on one of the Plans enrollment forms includes, utilization review, coordination of benefits and or reimbursement with other health or insurance programs.

b. **Special Consents:**

The Plan affords its members the right to consent specifically to requests for PHI in the following instances:

- treatment pertaining to mental illness, developmental disability, alcoholism, drug abuse or HIV infections
- treatment received from non-contracted practitioners/providers
- workers compensation or auto insurance claims
- marketing purposes
- research

c. **Authorized Consents:**

For cases in which the Plan is required to obtain informed consent for treatment or special consent for the release of and access to PHI from members who lack the ability to give consent, the following persons can be authorized by the member;

- guardian or legal custodian of a minor member.
- guardian of a member adjudged incompetent.
- personal representative or spouse of a deceased member.
- any person authorized in writing by the member.

If no spouse survives a deceased member, an adult member of the deceased member's immediate family may qualify. A court appointed temporary guardian of PHI may also qualify to sign consent

for the release of information. In cases involving court decrees or appointments, NHP/NHIC must utilize court documents to determine the validity of the consent.

**B. *Access to health plan information and Protected Health Information***

1. The following entities may request access to the member's PHI at NHP/NHIC; members, employees, employers/plan sponsors, agents, brokers, practitioners, providers, third parties such as vendors or consultants, non-contracted practitioners and/or providers, oversight organizations and researchers.

a. **Member:**

The member has the right to contact the Plan to obtain access to his or her PHI for review, comment and correction of any errors. Members should also be directed to the originating source of the health information to correct errors.

b. **Employees:**

The member's privacy is protected internally within the Plan's administrative functions by;

- identifying employees who have access to PHI;
- restricting automated system access to only those employees whose job description requires access;
- requiring all new employees, during orientation, to read and understand the confidentiality policies, as well as include provisions for actions if employees inappropriately use or disclose PHI;
- requiring all employees, and non-employee committee members' to sign either NHP/NHIC's Confidential Healthcare Information Agreement or a Business Associate Agreement if applicable.

c. **Employers:**

The Plan ensures that the use and disclosure of Protected Health Information is consistent with the requirements of the Privacy Rule. NHP/NHIC prohibits sharing members' PHI with any employer/plan sponsor, agent, and/or broker

without a signed and dated Business Associate Agreement/Addendum or a PHI Confidentiality Agreement (see related document). The Agreements acknowledge that PHI must be safeguarded and agrees to the following:

- i. To not use or disclose PHI other than as permitted by NHP/NHIC documents or required by law;
- ii. Ensure that agents and subcontractors of the employer/plan sponsor, agent and/or broker agree to the same restrictions and conditions as the employer/plan sponsor, agent and/or broker with regard to PHI;
- iii. Prohibit the use of PHI by the employer/plan sponsor, agent and/or broker for employment or other benefit related decisions;
- iv. Notify the organization of any use or disclosure of PHI that is inconsistent with the uses and disclosures established in the plan documents;
- v. Allow individuals access to PHI, including access to amend PHI;
- vi. Make necessary information available to the organization in order to provide individuals with accountings of disclosure;
- vii. Procedures for return, destruction and restrictions of further use of PHI by employer/plan sponsor, agent and/or broker;
- viii. Identify the employer/plan sponsor, agent and/or broker who have access to PHI; and
- ix. Include provisions for actions if employer/plan sponsor, agent and/or broker inappropriately use or disclose PHI.

The Plan also ensures that PHI shared with employers, if implicitly or explicitly identifiable, requires a specific consent by the member. Explicit information is clearly identifiable with member names. Implicit information does not include specific member names but includes information that may be used to identify members.

d. **Practitioners/Providers/Other Third Parties:**

The Plan ensures that contractual agreements with third parties that provide clinical and administrative services incorporate confidentiality requirements into the agreement.

e. **Non-contracted Practitioners/Providers:**

The Plan will verify how the information will be used and obtain from the practitioner/provider a signed agreement that indicates their compliance with specific confidentiality policies governing the use of information shared by the Plan.

f. **Oversight Organizations:**

The Plan ensures that accrediting bodies, state and federal agencies include in their contracts, terms that describe their responsibility to maintain the confidentiality of any PHI that they receive. To the extent possible, these organizations should minimize their access to personally identifiable health information. Aggregated and or de-identified data should be used when ever feasible.

g. **Researchers:**

The Plan ensures that the intended research has had appropriate reviews for and contains necessary controls to protect the confidentiality of the member.

h. **All Treatment Settings:**

The Plan ensures protection of privacy in all treatment settings. Site visit criteria includes adequacy of medical/treatment recordkeeping and confidentiality of records.

C. ***Use of aggregated data*** in which an individual's PHI is not identifiable to a statistically significant degree is not subject to privacy restrictions.

D. ***Use and protection of Protected Health Information for quality measurement.***

The Plan minimizes the identifiably of the data used for quality measurement and protects the information from inappropriate disclosure.

Quality initiatives that include collection of measurement data are planned and approved by the Quality Management Committee (QMC) annually. Ad hoc requests for additional quality measurements that are not significantly addressed in the approved quality work plan require separate approval by the QMC.

All Plan employees reviewing PHI off site will sign a confidentiality agreement as requested and protect the information from being viewed by unauthorized personal.

E. ***Quality Management Committee (QMC) responsibilities***

QMC has designated the Compliance Committee to create and review the Confidentiality policy and to review the practices regarding collection, use and disclosure of medical information.

The QMC Approves:

- confidentiality policies for the organization;
- mechanisms to oversee the application of the policies;
- opportunities for reducing collection of unnecessary data;
- removing identifying data as close to its source as possible;
- levels of authorized user access to data across the delivery system including practitioners, their staff and the Plans administrative staff;
- mechanisms for adhering to specific requests to limit access to data; appeals process to address member concerns regarding confidentiality of data; and,
- a process to review requests to use member data and, if applicable, review internal requests and external request to access data for quality improvement activities.

The Privacy and Confidentiality of Member Information and Records Policy is reviewed by the Plan's Compliance Officer for compliance with state and federal regulations and approved by the QMC. This policy will be reviewed and revised as needed, or at least every two years.

For related policies see: NHP/NHIC-Notice of Privacy Practices, Business Information Protection Policy and/or Computer Security.