

## 6.06 Document Retention

The Plan must retain copies of its Policies and Procedures and all communications that the HIPAA Privacy Rule requires to be in writing. The Plan must also retain records of actions or designations that the HIPAA Privacy Rule requires to be documented. Materials can be maintained in written or electronic form. They must be retained for six (6) years from the date of their creation or when they were last in effect (whichever is later).

Business Associates and Insurers will retain documents in their possession as required by the HIPAA Privacy Rule and Business Associate Agreements.

### a. Document Retention Checklists

The following are checklists of materials that the Plan's Administrator will retain under this rule:

Documents	
<input type="checkbox"/> Privacy Policies and Procedures (this Manual)	<input type="checkbox"/> Documentation that training has been provided to employees
<input type="checkbox"/> Authorizations	<input type="checkbox"/> Information in Designated Record Set to which Participants and similar persons have access (see Section 5.02)
<input type="checkbox"/> Plan Amendments	<input type="checkbox"/> Data Use Agreements (used in certain cases involving summary data disclosed for research, public health, or Health Care Operations purposes)
<input type="checkbox"/> Plan Amendment certifications	
<input type="checkbox"/> Business Associate Agreements	
<input type="checkbox"/> Notices of Privacy Practices	

**Key person identification**

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|---|--|
| <input type="checkbox"/> Name of Privacy Official<br><br><input type="checkbox"/> Name of contact person or office responsible for receiving complaints and providing additional privacy information<br><br><input type="checkbox"/> Titles of persons or offices responsible for receiving and processing requests for access to their PHI | <input type="checkbox"/> Titles of persons or offices responsible for receiving and processing requests to amend PHI<br><br><input type="checkbox"/> Titles of persons or offices responsible for receiving and processing requests for an accounting of non-routine disclosures made without Authorization, such as disclosures legally required or made for public health, law enforcement, judicial, and similar purposes |
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**Other materials relating to particular actions by the Plan**

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| <input type="checkbox"/> Complaints about the HIPAA Privacy Rule or this Manual and their disposition, if any<br><br><input type="checkbox"/> Documentation of sanctions applied to employees for not complying with the HIPAA Privacy Rule, if any<br><br><input type="checkbox"/> Notices that deny a person's access to PHI<br><br><input type="checkbox"/> Notices that delay a person's access to PHI<br><br><input type="checkbox"/> Notices that explain whether the Plan will overturn a decision to deny a person access to PHI<br><br><input type="checkbox"/> Notices that deny a person's request to amend PHI<br><br><input type="checkbox"/> Notices that delay amendments to PHI<br><br><input type="checkbox"/> Statements of persons disagreeing with the Plan's decision to deny a request to amend PHI and any rebuttals of the statements<br><br><input type="checkbox"/> Disclosures of PHI for which a person is entitled to an accounting<br><br><input type="checkbox"/> Written statements or other documentation in | <input type="checkbox"/> Description of PHI disclosed<br><br><input type="checkbox"/> Copy of disclosure requests (or if made orally, statements describing the disclosures' purpose)<br><br><input type="checkbox"/> Court orders, grand jury subpoenas, etc., where disclosure is required by law<br><br><input type="checkbox"/> Written statements in connection with disclosures needed for other judicial/administrative processes, where the disclosure is not mandated by court order<br><br><input type="checkbox"/> Institutional or privacy board approvals for research-related disclosures<br><br><input type="checkbox"/> Copies of written accountings<br><br><input type="checkbox"/> Plan's notice terminating a restriction on uses or disclosures of PHI previously agreed to by the Plan<br><br><input type="checkbox"/> Person's agreement or request to |
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**Other materials relating to particular actions by the Plan**

support of verifications made prior to disclosures

- ☐ Written statements by agencies or officials supporting suspension of an accounting of PHI disclosures (including oral statements documented by the Plan)
- ☐ Conclusion and supporting analysis from an expert that health information is de-identified

terminate a restriction on uses or disclosures of PHI previously agreed to by the Plan

- ☐ Other communications required by the Plan to be in writing, including requests for Confidential Communications

**b. Citations**

45 CFR § 164.530(j)





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## **7. Required Legal Documents**

7.01 Overview

7.02 Privacy Notice

7.03 Amendments to Plan Documents

7.04 Plan Sponsor Certifications

7.05 Business Associate Agreements

7.06 Authorization

## 7.01 Overview

The HIPAA Privacy Rule requires Covered Entities to use specific documents to accomplish certain tasks.

- A Privacy Notice describes the Plan's practices concerning its uses and disclosures of PHI and informs Participants of their rights and of the Plan's legal duties, with respect to PHI (see Section 7.02);
- An Amendment to the Plan document describes the Plan's permitted uses and disclosures of PHI (see Section 7.03);
- A plan sponsor certification certifies that the Plan Sponsor has adopted the Plan Amendment and agrees to the restrictions on the uses and disclosures of PHI (see Section 7.04);
- A Business Associate Agreement describes the permitted uses and disclosures of PHI by the Business Associate (see Section 7.05); and
- A Participant's Authorization permits the Plan to use and disclose the Participant's PHI for purposes not otherwise permitted or required by the HIPAA Privacy Rule (see Section 7.06).

## **7.02 Privacy Notice**

The Plan's Administrator will provide a Privacy Notice in Section 10.07 to satisfy the notice obligation for the Plan's self-funded benefits. Each health insurance issuer or HMO will provide its own Privacy Notice to those Participants who receive insured Plan benefits, in accordance with the requirements of the HIPAA Privacy Rule.

### ***a. Identifying the Recipients***

The Plan's Administrator will provide the Privacy Notice (see Section 10.07) to Participants (including both active and former employees) who are covered under a self-funded Plan benefit, no later than April 14, 2003. The Plan's Administrator will not provide a separate Privacy Notice to spouses or dependents, except for qualified beneficiaries who made independent COBRA elections (e.g., following a divorce or the death of an employee). The Plan's Administrator will also provide the Privacy Notice to new enrollees under a self-funded Plan benefit at the time of enrollment.

In addition, the Plan's Administrator will provide the Privacy Notice to all Business Associates.

### ***b. Distributing the Notice***

The Plan's Administrator will provide the Privacy Notice by in-District mail or first-class mail.

The Plan's Administrator will prominently post the Privacy Notice on any web sites that it maintains that provide information about the Plan's services or benefits.

### ***c. Revising the Notice***

The Plan's Administrator will revise the Privacy Notice if its terms are affected by a change to the Plan's Policies and Procedures.

If the change is material (as determined by the Privacy Official), the Plan's Administrator will provide the revised Privacy Notice to Participants covered under a self-funded Plan benefit within sixty (60) days of the change. No material change will be implemented before the effective date of the revised Privacy Notice (except where required by law). In addition, the Plan's Administrator will promptly provide revised Privacy Notices to Business Associates and Everett School District employees and Board of Trustees who perform Plan functions.

***d. Informing Participants of the Availability of the Notice***

Once every three (3) years, the Plan's Administrator will inform all Participants of the Privacy Notice's availability and how to obtain a copy. The Plan's Administrator will send this reminder via in-District mail or first-class mail.

***e. Documenting Notices***

All Privacy Notices will be documented and retained for a period of six (6) years from the date of creation or when last in effect, whichever is later.

***f. Citations***

45 CFR § 164.520(d)



## **7.03 Amendment to Plan Documents**

The HIPAA Privacy Rule permits the Plan to share PHI with the Plan's Administrator after the Board of Trustees has amended its Plan documents, as described. The Plan's Administrator must restrict its use of the PHI to Payment and Health Care Operations activities.

### ***a. Required Plan Amendments***

The Board of Trustees will amend its Plan Documents (see Section 10.06(a)) to include provisions that:

- Describe the Plan's Administrator permitted uses and disclosures of PHI;
- Provide that the Plan can disclose PHI to the Plan's Administrator only upon receipt of a written certification from the Board of Trustees that the Plan Documents have been amended to include specific restrictions on the use and disclosure of PHI and that the Board of Trustees have agreed to those restrictions; and
- Provide adequate firewalls, such as identifying the employees (by name or by function) who will have access to PHI, restricting access solely to the identified employees for Plan administration functions, and providing a mechanism for resolving issues of noncompliance.

### ***b. Documenting Plan Amendments***

The Plan's Administrator will retain the amended Plan Documents for a period of at least six (6) years from the date when last in effect.

### ***c. Citations***

45 CFR § 164.504(f)(2)

## 7.04 Plan Sponsor Certifications

The HIPAA Privacy Rule requires the Board of Trustees to certify to the Plan that it has amended the Plan document in order for the Plan to share PHI with the Plan's Administrator. The Plan will disclose PHI to the Plan's Administrator only after the Board of Trustees provides the Plan with that written certification.

### ***a. Written Certification Requirements***

The Board of Trustees written certification (see Section 10.06(b)) provides that Everett School Employee Benefit Trust will take the following actions:

#### **Required elements of the Board of Trustee's written certification**

- Not use or further disclose PHI other than as permitted or required by the Plan documents or as required by law;
- Ensure that any subcontractors or agents to whom the Plan's Administrator provides PHI agree to the same restrictions;
- Not use or disclose the PHI for employment-related actions or in connection with any other benefit program of the Plan;
- Report to the Plan any use or disclosure of which the Plan's Administrator becomes aware that is inconsistent with the Plan documents or the HIPAA Privacy Rule;
- Make PHI accessible to individuals in accordance with Section 4.02;
- Allow individuals to amend their information in accordance with Section 4.03;
- Provide an accounting of its disclosures in accordance with Section 4.06;
- Make its practices available to HHS for determining compliance;
- Return and destroy all PHI when no longer needed, if feasible; and
- Ensure that adequate separation exists between the Plan's Administration activities and all other activities.

### ***b. Documenting Certifications***

All certifications will be retained for a period of six (6) years.

**c. Citations**

45 CFR § 164.504(f)(2)(ii)



## **7.05 Business Associate Agreements**

The HIPAA Privacy Rule requires each Business Associate of the Plan to enter into a written contract (a Business Associate Agreement) with the Plan before the Plan can disclose PHI to it, except as indicated below. The Business Associate can use and disclose PHI only for the purposes provided in the Business Associate Agreement. A Business Associate not yet required to enter into a Business Associate Agreement must still comply with the HIPAA Privacy Rule. The Privacy Official will monitor how PHI maintained by the Business Associate is handled at the termination of the Business Associate Agreement and will, while the agreement is in force, act upon complaints of privacy violations and breaches.

### ***a. Identifying Business Associates***

The Plan's Administrator will determine which service providers are Business Associates. The log of Business Associate Agreements is at Section 10.04.

### ***b. Signing Business Associate Agreements***

The Plan will require each Business Associate to sign a Business Associate Agreement (see Section 10.04) or a contract that contains the required terms, as determined by the Privacy Official.

### ***c. Timing of Business Associate Agreements***

A Business Associate must sign a Business Associate Agreement no later than April 14, 2003, except as indicated below. After that date, the Plan will not disclose PHI to a Business Associate unless a Business Associate Agreement has been signed.

The Plan will have up to an additional year to enter into a Business Associate Agreement with a Business Associate if before, October 15, 2002, an existing written contract governed the arrangement and the Plan has not renewed or modified the contract before April 14, 2003. The deadline to amend such a contract is the earlier of the date the contract is amended or April 14, 2004.

The Plan will send a letter to each Business Associate whose contract is eligible for an extension of time, detailing the Business Associate's responsibilities to comply with the HIPAA Privacy Rule as of April 14, 2003.