

PROCEDURES MEMORANDUMS

TO: MCC Personnel

FROM: Office of the President

SUBJECT: Guidelines Relating to Implementation of the Privacy Regulations of the Health Insurance Portability and Accountability Act of 1996 (HIPAA)

DATE: April 6, 2010

PURPOSE: To provide guidelines and procedures for implementation of and compliance with the Privacy Rules of the Health Insurance Portability and Accountability Act (HIPAA) of 1996 and the Standards for Privacy of Individually Identifiable Protected Health Information.

SCOPE: This procedure applies to all College personnel to ensure that protected health information is only used or disclosed for its intended purpose in accordance with general and/or specific individual notifications and authorizations, except where permitted or required by law, with specific actions and responsibilities as outlined in this Procedures Memorandum (PM).

GENERAL PRINCIPLES:

This Procedures Memorandum is designed to meet the provisions of the Health Insurance Portability and Accountability of 1996 (commonly known as HIPAA) and to inform College personnel of their rights and responsibilities under HIPAA.

It is the College's policy to encourage employees to exercise their rights under HIPAA and this Procedures Memorandum; and, the College requires all personnel to respect the privacy of their coworkers and act in compliance with HIPAA and the Procedures Memorandum.

1. Introduction

The privacy rules of HIPAA provide guidelines for safeguarding the use and disclosure of individually identifiable health information, which is called "PHI". The general principle of the HIPAA privacy rules are that PHI may not be used or disclosed except as authorized by the individual who is the subject of the information or as explicitly required or permitted by the regulations or other law. When the use or disclosure of PHI is permitted, under most circumstances, only the minimum necessary amount of PHI needed to accomplish the intended purpose of the use or disclosure may be provided.

MCC is the sponsor of several health plans which are covered by HIPAA. Members of MCC's workforce may have access to health information from the health plans in order to act on behalf of the plans or on behalf of MCC for the administration of the health plans. It is MCC's policy to comply fully with HIPAA's requirements and all MCC personnel must comply with this Procedures Memorandum and with MCC's HIPAA Privacy Rule Policies and Procedures Manual, which is a separate document. This Manual is available at the Human Resources Office, Fort Omaha Campus.

All documentation with regard to compliance with the HIPAA privacy rules, including this Procedures Memorandum and the HIPAA Privacy Rule Policies and Procedures Manual, will be maintained by the Privacy Officer. Such documentation may be revised as necessary or appropriate to comply with changes in the law, standards, requirements and implementation specifications (including changes and modifications in federal regulations). Any such revisions will be promptly documented.

A. Background

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) became law in August of 1996. HIPAA has two components: (1) Portability—designed to improve access to health insurance, especially for people who change employers or leave the workforce; and (2) Accountability or Administrative Simplification—designed to improve the efficiency and effectiveness of the healthcare system and to protect the privacy and security of health-related data.

The Accountability component of HIPAA required that regulations be developed to implement a comprehensive federal law to protect individually identifiable health care information. The Department of Health and Human Services issued the final privacy regulations on August 14, 2002. These regulations (the Standards for Privacy of Individually Identifiable Health Information) are the basis of the privacy rules.

The privacy rules create national standards to protect health information, setting a minimum standard of safeguards. The rules prohibit disclosure of protected health information, except in accordance with the privacy rules.

- 1) What is Protected Health Information (PHI)?
Protected health information, or PHI, includes certain health information that:
 - a) Is collected from an employee, created, or received by certain group health plans, including medical, dental, vision, prescription drug, health care flexible spending account plans and employee assistance programs, relating to the past, present, or future:
 - (1) physical or mental health or condition of an employee,
 - (2) provision of health care to the employee by doctors and health care providers, or

- (3) payment for the provision of health care to the employee; and
- b) Identifies the employee to whom it relates or for which there is a reasonable basis to believe that such information could be used to identify the employee.

Examples of PHI are an employee's name, address, telephone number, social security number, diagnosis, treatment history and medication history. This Procedures Memorandum only applies to PHI as defined under HIPAA.

2) Who is Covered by HIPAA?

The provisions of HIPAA only apply to "Covered Entities." A Covered Entity includes: (a) health care providers; (b) health care clearinghouses; and (c) health plans.

HIPAA indirectly applies to any organization that exchanges data with a Covered Entity, including business associates, contractors, consultants and researchers using personally identifiable health information.

The College itself is not a Covered Entity; however, the benefit plans of the College that provide health benefits for College personnel are Covered Entities. To clarify this distinction, any references to "MCC" in this Procedures Memorandum shall mean the health plans sponsored by the College or the College solely as the sponsor of such plans. The health plans include the health benefits under the Flexible Compensation Plan and any arrangement that provides group health or dental benefits, but does not include any arrangement providing life, disability, or AD&D benefits or workers' compensation benefits.

Although the plans are Covered Entities, because the plans themselves are not an entity capable of individual action, responsibility for HIPAA must rest with another entity. For purposes of HIPAA compliance, the College is not directly responsible for certain of the health plans for which it is the sponsor. The majority of the health plans sponsored by the College are "fully-insured" plans, meaning that benefits are provided by an insurance contract between an insurance company and MCC and MCC receives only enrollment or summary health information. For these health plans, responsibility for HIPAA compliance rests primarily with the insurance company; these companies have adopted policies and procedures to comply with the HIPAA privacy rules, as described in the privacy notice provided by each company directly to College personnel. Any questions, requests or complaints for these plans should be directed to the individual or entity indicated in the company's notice. Please contact Human Resources if you need assistance in locating or contacting the proper persons with regard to these health plans.

However, one of the health plans sponsored by MCC is “self-insured”—the Flexible Compensation Plan. For this health plan, responsibility rests primarily with MCC, as described below and in MCC’s HIPAA Privacy Rule Policies and Procedures Manual. As a result, any references to “health plans” in this Procedures Memorandum shall mean all of the health plans sponsored by MCC. Any references to “Plan” in this Procedures Memorandum shall mean solely the health plans for which MCC is primarily responsible for HIPAA compliance.

3) Other Definitions

- a) Business Associate—an entity that performs or assists in performing a plan function or activity involving the use and disclosure of PHI or provides consulting, data, management, legal, accounting, actuarial, consulting or financial services to the Plan involving access to PHI.
- b) Disclosure—the release, transfer, provision of access to, or divulging in any other manner individually identifiable health information to persons outside of MCC and/or the Plan.
- c) Health Care Operations—includes the following activities, to the extent related to administration of the Plan: quality assessment and improvement activities, plan performance reviews, underwriting and premium rating, arranging for medical review or audits, business planning and development, and business management and general administrative activities.
- d) Payment—activities taken by the Plan or by the Human Resources Office to obtain plan contributions (i.e., premium payments or salary reduction amounts), to determine or fulfill a Plan’s responsibility to provide benefits, or to obtain or provide reimbursement for health care. Payment may also include eligibility and coverage determinations for coordination of benefits and adjudication or subrogation of health benefit claims; risk adjustment based on enrollee status and demographic characteristics; and billing, claims management, collection activities, obtaining reinsurance payments, and related health care data processing.
- e) Plan—the Flexible Compensation Plan sponsored by MCC.
- f) Treatment—the provision, coordination or management of health care and related services.
- g) Use—the sharing, employment, application, utilization, examination, or analysis of individually identifiable health information by any person working for or within MCC or by a Business Associate of the Plan.

B. Designation of Privacy Officer and Contact Person

The Director of Benefits and Compensation of Human Resources has been designated the Privacy Officer for the Plans. The Director of Benefits and Compensation may be contacted:

- 1) By mail: Human Resources Office
Fort Omaha Campus
P.O. Box 3777
Omaha, Nebraska 68103-0777
- 2) By phone: (402) 457-2234

The Human Resources Office is the contact for the Plan for all questions regarding HIPAA compliance and PHI and to submit a complaint.

2. Principles and Objectives of HIPAA Privacy Regulations

The primary objectives of the privacy rules are to address the use and disclosure of individuals' health information and to provide certain rights to individuals over such information. The intent of the rules is to increase the protection of health information by limiting covered entities' ability to use and disclose such information without an individual's advance authorization while granting individuals greater control over and rights to such information. It is the College's policy to use and disclose plan PHI of its employees only in accord with HIPAA. In addition, it is the College's policy to respect and support employees' individual rights over their health information that is held by the Plan. No employee shall be required to waive his or her privacy rights under HIPAA as a condition of treatment, payment, enrollment or eligibility.

A. Uses and Disclosures of PHI

The privacy rules are designed to ensure that an individual's PHI that is in possession of a health plan is not disclosed to the College, other than to certain human resources personnel who must have access to such information to carry out their responsibilities to the health plans and the College. The rules are also designed to ensure that this information is not available for use by the College to make employment-related decisions about personnel or decisions about other benefit plans sponsored by the College.

The privacy rules generally provide for three categories of uses and disclosures: permitted, authorized, and required.

First, in general, MCC is permitted, and reserves the right, to use PHI for payment purposes or health care operations under the Plan or to disclose PHI to another covered entity for payment purposes or health care operations, in accordance with the HIPAA privacy rules. MCC may also freely use or disclose de-identified information, which is health information that does not identify the individual and with

respect to which there is no reasonable basis to believe the information can be used to identify the individual. MCC may, and reserves the right to, disclose PHI to a Business Associate of the Plan and allow such Business Associate to create or receive PHI on its behalf. Prior to doing so, MCC shall contract with the Business Associate to ensure that it will appropriately safeguard such PHI.

In addition, under the privacy rules, MCC is permitted to use or disclose PHI under the following circumstances without authorization:

- 1) for public health activities;
- 2) to report victims of abuse, neglect, or domestic violence;
- 3) for health oversight activities;
- 4) for judicial and administrative proceedings;
- 5) for law enforcement purposes or otherwise required by law;
- 6) to avert a serious threat to health or safety;
- 7) in relation to workers' compensation programs; and
- 8) for other allowable purposes (including, but not limited to, organ donation, notification of death, specialized government functions, and limited research).

MCC may disclose PHI to a family member, close friend, or other person identified by the employee as a person involved in the health care of an employee without the employee's authorization. MCC will generally rely on the persons listed by employees in their emergency contacts as being those to whom a disclosure may be made, unless the employee specifically objects to such disclosure, or in an emergency.

Second, MCC may disclose PHI for any purpose for which an employee has provided a valid authorization, to the extent consistent with its terms and conditions. Authorizations are discussed in more detail in a later section of this Procedures Memorandum.

In addition, in accordance with the privacy rules, MCC may treat a personal representative of an employee as if he or she were the employee with regard to PHI. Personal representatives include, but are not limited to, the parent or guardian of a minor, the executor or administrator of the estate of a deceased employee, or a person holding a power of attorney for an employee. The Privacy Officer shall have the sole discretion in determining whether to disclose PHI to a personal representative and may refuse upon a reasonable belief that such act would endanger the employee.

Lastly, under the privacy rules, MCC is required disclose PHI under the following circumstances: (1) to the employee who is the subject of the PHI, and (2) to the United States Department of Health and Human Services for purposes of enforcing HIPAA.

In no event shall PHI be used or disclosed for the payment or operations of any non-health benefits without the authorization of the employee or unless such use or disclosure is authorized or required by and to the extent necessary under other federal or state law.

In the event of any use of disclosure in violation of this Procedures Memorandum or the HIPAA Privacy Rule Policies and Procedures Manual, MCC shall mitigate, to the extent possible, any harmful effects that become known to MCC. If an employee becomes aware of a disclosure or use of PHI, either by an employee or a Business Associate of the Plan, the employee should immediately contact the Privacy Officer so appropriate steps may be taken to mitigate any harm.

B. Minimum Necessary Standards

When implementing the procedures of MCC's HIPAA Privacy Rule Policies and Procedures Manual, MCC shall make reasonable efforts to ensure that only the minimum amount of information necessary to satisfy the particular purpose of the use or disclosure is provided. The minimum necessary shall be determined by the Privacy Officer taking into account the purpose of the use or disclosure.

The Privacy Officer may review all disclosures to ensure that the amount of information disclosed is the minimum necessary. In general, MCC will not release its entire PHI record of an employee unless justified as the minimum necessary for the stated purpose.

In accordance with the privacy rules, MCC may presume that requests from public officials, health care providers, health care plans, and Business Associates as well as requests under a valid authorization and from employees are for the minimum amount of information necessary for the stated purpose. In addition, the minimum necessary standard does not apply to uses or disclosures to the employee or the Department of Labor and to those made under a valid authorization or as required by law.

C. Individual's Rights Regarding Control of Uses & Disclosures of PHI

HIPAA entitles individuals to request restrictions on the use and disclosure of their PHI. For the Plan, any such request must be made in writing to the Privacy Officer. It is in the Privacy Officer's sole discretion whether to honor such request.

In addition, personnel may request to receive any communication concerning their PHI by alternative means or at alternative locations. Personnel may request that they be contacted only at work or only by written mail. Any such request must be made in

writing to the Privacy Officer. It is in the Privacy Officer's sole discretion whether to honor such request. The alternative means or location requested must be reasonable and must allow the Privacy Officer to meet its HIPAA privacy responsibilities; however, the Privacy Officer will make every effort to honor the request if an employee provides information that the disclosure of the PHI could endanger the employee.

D. Individual's Right to Request Access to, an Accounting of, or the Amendment of PHI

HIPAA gives individuals the right to access, inspect, and obtain copies of their PHI from a covered entity. To the extent that the Plan maintain PHI, employees may request a copy of PHI in designated record sets maintained by the Plan (or their Business Associates) or a summary of such PHI by making such request to the Privacy Officer in writing. A designated record set is a group of records maintained by or for a covered entity. With regard to a health plan, this record set may include enrollment, payment and claims adjudication information as well as other PHI used by or for the plan to make coverage decisions. MCC may impose a fee for providing access to or summarizing or copying PHI.

An individual may request an amendment to the PHI maintained by the Plan. The request must be made in writing to the Privacy Officer, who will consider the request and respond. If the request is made by another covered entity, MCC shall generally make such amendment.

HIPAA also gives individuals the right to obtain an accounting of certain disclosures of the individual's PHI. In general, an accounting will provide a list of disclosures, including the date of the disclosure, a brief description of the information disclosed, a brief statement of the purpose of the disclosure, and a copy of the written request for such disclosure, if any. An accounting may include any disclosures made in the last 6 years beginning on April 14, 2004, but will not include all disclosures, for example, disclosures:

- 1) to carry out treatment, payment or health care operations;
- 2) to individuals concerning their own PHI or to their personal representative, family member, close friend, or other person identified as being involved in the individual's health care;
- 3) incident to an otherwise permitted use or disclosure;
- 4) pursuant to an authorization;
- 5) as part of a limited data set; or
- 6) for national security or law enforcement purposes.

Requests for accountings must be made, in writing to the Privacy Officer. The Privacy Officer will generally respond to the request within 60 days; however, if this is not possible, the Privacy Officer may provide the employee with a written notice that extends the period an additional 30 days and states the reason for the delay and the date on which the accounting will be provided. Although the first accounting in any 12 month period will be provided free of charge, the Privacy Officer may impose reasonable fees for producing and mailing any additional accountings.

E. Notice of Privacy Practices

MCC shall notify personnel of their rights under HIPAA as required by the privacy rules. The Privacy Officer is responsible for developing and maintaining a notice of the HIPAA privacy practices applicable to the Plan. The HIPAA Privacy Notice describes, in detail, the following:

- 1) the uses and disclosures of PHI that may be made by the Plan;
- 2) individual rights under HIPAA's privacy rule, and
- 3) the legal duties of the Plan with respect to PHI.

The HIPAA Privacy Notice will inform personnel that certain MCC staff members will have access to PHI in connection with administration of the Plan and will provide a description of the complaint procedures, contact information for questions and further information, and the date of the Notice.

The Notice will initially be delivered to all personnel no later than April 14, 2004. Following the initial delivery, the Notice will be provided on an on-going basis upon enrollment in the Plan and at least once every 3 years to all personnel. The Notice will also be provided to all personnel within 60 days of a material change to the information provided in the Notice.

If a change in law impacts the Notice, the Notice will be promptly revised and provided to personnel. However, unless the law provides otherwise, any such change will be effective only with respect to PHI created or received after the effective date of the revised Notice.

F. Authorizations for Use and Disclosure

An employee may authorize MCC to use or disclose PHI. The authorization must be a signed and dated document that contains specific information, including the PHI to be disclosed, the persons permitted to receive the PHI, and an expiration date. The procedures for authorizations are provided by MCC's HIPAA Privacy Rule Policies and Procedures Manual.

When implementing the procedures of MCC's HIPAA Privacy Rule Policies and Procedures Manual, MCC shall take reasonable steps to verify the identity and authority of the person or entity requesting access to any PHI in MCC's possession. This shall include requesting an authorization from any individual or entity that is not a Business Associate of the health plans sponsored by MCC. However, an authorization is not required for a situation involving treatment, payment, or health care operations or a situation for which the regulations allow such release when notice to agree or object is provided. MCC shall use the procedures and the forms outlined in MCC's HIPAA Privacy Rule Policies and Procedures Manual.

Reasonable steps for verification may include, but are not limited to: reviewing identification or a power of attorney or other paperwork legally authorizing the individual to obtain PHI for the employee, a written statement on letterhead, or personal knowledge of the requesting party.

G. Training

To meet the requirements of the privacy rules and to promote understanding of and compliance with HIPAA, MCC will provide training to its personnel on the requirements of HIPAA at a level appropriate for such person. For example, for staff members who may have access to PHI from the health plans, MCC may provide training sessions on its privacy policies and procedures while personnel without such access may receive a brief, written explanation of HIPAA with their HIPAA Privacy Notice. At a minimum, all employees commencing employment after April 14, 2004, shall receive a summary of MCC's responsibilities under the Privacy Rule during new employee orientation.

The Privacy Officer is responsible for developing training programs and materials so that all staff members receive the training necessary and appropriate to permit them to carry out their duties.

H. Business Associates and Agreements

HIPAA requires a health plan to obtain satisfactory assurances from Business Associates that they will safeguard the PHI they receive or create on behalf of the health plan. These assurances must be set out in a written contract or other agreement.

MCC shall enter into a written agreement prior to releasing any PHI to a Business Associate in accordance with the business associate policy found in the MCC HIPAA Privacy Rule Policies and Procedures Manual. In addition, MCC shall, to the extent required by law, enter into a written agreement as a Business Associate with each company responsible for HIPAA compliance for any of the health plans.

I. Complaint Procedures and Anti-Retaliation Policy

If an employee believes that the College has failed to abide by the terms of HIPAA, the employee has a right to file a written complaint. Any such complaint must be submitted in a written or electronic form and be made within 180 days after the employee becomes aware of the violation. The complaint must be submitted to the Contact Person for the Plan for any complaints with regard to a violation of HIPAA, this Procedures Memorandum, or MCC's HIPAA Privacy Rule Policies and Procedures Manual.

The Privacy Officer is responsible for creating and maintaining the process for individuals to lodge complaints about MCC's HIPAA Privacy Rule Policies and Procedures Manual, this Procedures Memorandum, or any other HIPAA documentation; compliance with such HIPAA documentation; or compliance with the privacy rules themselves. Under such policy, the College forbids any intimidation of, threats to, coercion of, discrimination against, or any other retaliatory action against individuals for exercising their rights, filing a complaint, participating in an investigation, or opposing any improper practice under HIPAA in connection with the health plans. Retaliation of any form will not be tolerated.

3. Implementation Actions and Responsibilities

A. Responsibilities of the Privacy Officer and Contact Person

The Privacy Officer is responsible for the development and implementation of MCC's HIPAA policies and procedures relating to privacy, including, but not limited to this Procedures Memorandum and MCC's HIPAA Privacy Rule Policies and Procedures Manual. The Privacy Officer shall do the following:

- 1) Develop, implement, and maintain MCC's HIPAA Privacy Rule Policies and Procedures Manual, including, but not limited to, ensuring that the HIPAA Privacy Notice adequately informs plan participants of their rights and responsibilities and of the use and disclosure policies and designing and updating authorization forms and any standard forms developed or used for HIPAA compliance;
- 2) Oversee on-going compliance with HIPAA procedures and policies;
- 3) Develop training schedules and programs (written and otherwise) to ensure that all personnel receive the training necessary and appropriate to permit them to carry out their functions within MCC;
- 4) Prepare and maintain all documentation and records required in connection with HIPAA; and
- 5) Prepare and implement procedures for HIPAA related complaints.

The Human Resources Office will serve as the contact for personnel who have questions, concerns, or complaints about the privacy of their PHI and to report any violation of HIPAA, this Procedures Memorandum, or MCC's HIPAA Privacy Rule Policies and Procedures Manual.

B. Technical and Physical Safeguards

The Privacy Officer will establish on behalf of the health plans appropriate technical and physical safeguards to prevent PHI from intentional or unintentional use or disclosure in violation of HIPAA's requirements. These safeguards may include limiting electronic access (i.e., computer firewalls) and physical access (i.e., locked doors and file cabinets with keys limited to key personnel) to ensure that only authorized employees will have access to PHI.

C. Responsibilities of College Personnel

The College will not tolerate a violation of an employee's privacy as protected under HIPAA and this Procedures Memorandum. All College personnel are responsible for respecting the privacy of their coworkers and avoiding violations of HIPAA. In addition, all personnel are required to cooperate with any investigation or audit of the health plans with regard to compliance with the HIPAA privacy rules.

Supervisors and administrators are responsible for notifying the Human Resources Office immediately upon receiving a complaint or learning about any violation of HIPAA and for taking corrective actions promptly after consulting with the Privacy Officer to prevent any reoccurrence. After notifying the Human Resources Office, supervisors and administrators shall not engage in any investigation of the complaint or violation. No supervisor or administrator shall discourage or obstruct any employee from filing a complaint or reporting a violation of HIPAA, this Procedures Memorandum, or MCC's HIPAA Privacy Rule Policies and Procedures Manual.

D. Penalties for Violating HIPAA Privacy

If an employee violates HIPAA or this Procedures Memorandum and/or uses or discloses PHI in a manner that violates MCC's HIPAA Privacy Rule Policies and Procedures Manual or any comparable procedures and/or policies established for the health plans, the employee will be subject to appropriate discipline or corrective action, including, but not limited to, oral or written clarification of expectations, oral or written reprimand, probation, transfer, paid or unpaid suspension, and/or termination of employment.

4. Other HIPPA Matters

In addition to the matters discussed in Parts I – III, the privacy rules under HIPAA may impact other aspects of the College's business and activities. For example, the activities

of the health-related educational programs of the College (to the extent students become involved in the provision of health care to individuals or otherwise receive health information on individuals as part of their coursework and training) and the College's ability to comply with certain state and federal laws involving the health information of a student or an employee are impacted by HIPAA. It is the College's policy to comply with HIPAA in all respects and to take such actions as may be necessary to comply or assist a covered entity to comply with HIPAA, including, but not limited to, signing affiliation agreements with health care providers and providing information and/or forms to employees and students as may be required or requested from time to time. Where the College is not the covered entity, however, its actions shall be governed by such agreements with the covered entity that the College elects to make from time to time.

Adopted 4/2/04; Revised 10/17/05; Revised 03/08/07; Reviewed but no changes 2/4/08; Revised 4/6/10